TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 113.

THOMAS M. ADAMS AND E. C. MEANS, ADMINISTRATORS OF THOMAS W. MEANE, PETITIONERS,

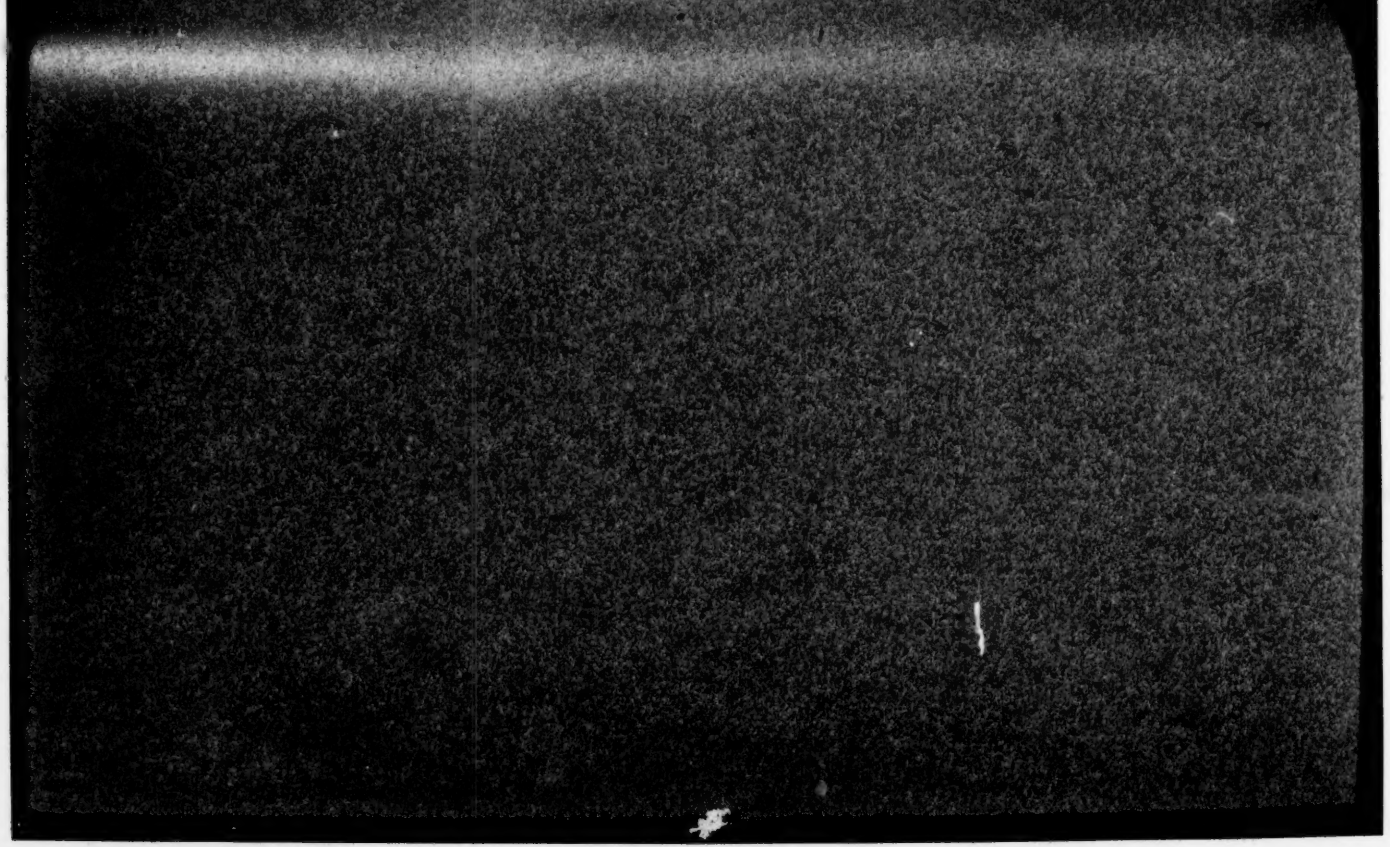
vs.

BENJAMIN R. COWEN, EVAN F. WILLIAMS, AND A. B. FRAZER, TRUSTEES.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

PETITION FILED MAY 24, 1897.
CERTIORARI AND RETURN FILED DECEMBER 6, 1897.

(16,694.)



(16,594.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 381.

THOMAS M. ADAMS AND E. C. MEANS, ADMINISTRATORS OF THOMAS W. MEANS, PETITIONERS,

vs.

BENJAMIN R. COWEN, EVAN F. WILLIAMS, AND A. S. FRAZER, TRUSTEES.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

INDEX.

	Original.	Print.
Caption	*a*	1
Designation by appellants of parts of record to be printed	1	1
Designation by appellees of additional parts of record to be printed	6	5
Transcript from circuit court of the United States for the District of Kentucky	13	10
Bill of complaint	13	10
Demurrer of John Means to the bill	13	10
Demurrer of Thomas M. Adams *et al.*, administrators, to the bill	20	15
Amendment to bill	22	16
Order on demurrers	24	18
Supplemental bill	24	18
Answer of John Means to bill and amended bill	26	20
Joint answer of Thomas M. Adams *et al.*, administrators, with will annexed	29	22

Judd & Detweiler, Printers, Washington, D. C., December 11, 1897.

	Original.	Print.
Replication of B. R. Cowen *et al.*, trustees, to answer of Thomas Adams *et al.*, administrators, and John Means	39	30
Amended bill	40	30
Supplemental bill	41	31
Memorandum for order	44	34
Will of Thomas W. Means	47	36
Amendment of answer	51	40
Order filing amendment of answer, &c	56	43
Motion of complainants to strike amendment of answer filed December 5, 1893, from files overruled	56	43
Opinion of Judge Barr	57	44
Decree dismissing bill as to John Means, &c	72	56
Order extending time to amend bill	73	56
Final decree	73	57
Prayer for appeal and assignment of errors	74	57
Order as to time to take testimony, &c	76	59
Opinion of Judge Barr on motion to allow appeal without executing appeal bond; motion denied	77	59
Testimony of John Means	79	61
Exhibit 1—Power of Attorney from Thomas W. Means to John Means, December 31, 1887	100	78
Exhibit No. 1—List of securities assigned by William Means to John Means	126	100
No. 2—Statement, William Means, in account with John Means	135	104
No. 3—Letter of February 21, 1888, John Means to William Means	141	107
No. 4—Letter of February 20, 1888, John Means to William Means	142	108
No. 6—Paper, dated February 15, 1888	150	115
No. 7—Letter of February 21, 1888, William Means to John Means	151	115
No. 8—Letter of February 23, 1888, William Means to John Means	152	116
No. 9—Letter of March 15, 1888, William Means to John Means	152	116
No. 10—Letter of December 28, 1889, Charles W. Baker to John Means	153	117
No. 11—Letter of July 17, 1890, Charles W. Baker to E. C. Means	154	118
No. 12—Letter of July 30, 1890, S. F. Hunt to Means	154	118
No. 13—Letter of June 14, 1888, William Means to John Means	155	119
No. 14—Letter of July 17, 1888, William Means to John Means	156	119
No. 15—Letter of July 27, 1888, William Means to John Means	156	120
No. 15 (2)—Letter of William Means	157	121
No. 16—Letter of March 26, 1888, William Means to John Means	159	122
No. 17—Receipt of James McConville for $75,000	161	124

	Original.	Print.
Exhibit No. 18—Letter of August 16, 1888, John Means to Mrs. William Means	168	130
No. 19—Letter of July 12, 1888, William Means to John Means	169	130
No. 20—Letter of April 16, 1888, William Means to John Means	175	135
No. 21—Letter of Feb. 17, 1893, Mollie to Martha	177	137
No. 22—Letter of September 5, 1889, William Means to John Means	179	138
Copy of appraisement of personal estate of Thomas W. Means	180	139
Exhibit No. 23—Copies of promissory notes of William Means	209	162
Letter of October 15, 1888, John Means to William Means	213	165
Statement of receipts and disbursements	226	176
Exhibit No. 27—Letter of April 3, 1888, William Means to John Means	237	181
No. 28—Letter of October 29, 1888, William Means to John Means	238	182
No. 29—Letter of December 7, 1888, Wm. Means to John Means	238	182
No. 31—Letter of August 1, 1888, Wm. Means to John Means	238	182
No. 32—Letter of April 2, 1889, Wm. Means to John Means	239	183
No. 33—Letter of June 1, 1889, Wm. Means to John Means	242	185
No. 34—Letter of May 26, 1888, Wm. Means to John Means	243	186
No. 35—Letter of October 24, 1888, Wm. Means to John Means	244	186
No. 36—Letter of October 22, 1888, The Major to John Means	244	187
No. 37—Letter of June 1, 1888, Wm. Means to John Means	245	187
No. 38—Letter of June 14, 1889, Wm. Means to John Means	245	187
No. 39—Letter of March 27, 1888, Wm. Means to John Means	246	188
No. 40—Letter of March 16, 1888, Wm. Means to John Means	247	189
No. 41—Letter of May 7, 1889, Wm. Means to John Means	247	189
No. 42—Letter of July 2, 1889, Wm. Means to John Means	248	189
No. 43—Letter of March 3, 1890, Wm. Means to John Means	248	190
No. 45—Letter of March 6, 1888, Wm. Means to John Means	249	191
No. 46—Letter of May 1, 1888, Wm. Means to John Means	250	191
No. 47—Letter of May 14, 1888, Wm. Means to John Means	251	192

	Original.	Print.
Exhibit No. 48—Letter of June 23, 1888, Wm. Means to John Means	251	193
No. 49—Letter of August 5, 1888, Wm. Means to John Means	252	193
No. 50—Letter of August 9, 1888, Wm. Means to John Means	253	194
No. 51—Letter of August 15, 1888, Wm. Means to John Means	253	194
No. 52—Letter of September 17, 1888, Wm. Means to John Means	254	195
No. 53—Letter of October 4, —, Wm. Means to John Means	255	195
No. 54—Letter of October 16, 1888, The Colonel to John	255	195
No. 55—Letter of October 25, 1888, Wm. Means to John Means	255	196
No. 56—Letter of November 22, 1888, Wm. Means to John Means	256	196
No. 57—Letter of July 9, 1888, Wm. Means to John Means	257	197
No. 59—Letter of Wm. Means, being the balance of Exhibit 20	257	197
No. 30—Receipt of Wm. Means to E. C. Means, Oct. 23, 1890, with statement annexed	260	199
Testimony of John Russell	264	203
Pearl Means	265	203
Gertrude Means	267	206
W. W. Culbertson	269	207
Evan F. Williams	270	208
Exhibit No. 60—Letter of February 24, 1888, John Means to William Means; list of securities	278	215
No. 61—Letter of February 16, 1888, John Means to William Means	279	216
No. 65—Letter of April 4, 1893, William Means to executors	288	223
Testimony of John McIntyre	406	320
Statement of account of John Means	410	323
Statement of advances to John Means	418	328
Current account of John Means	419	328
Statement of account of William Means	421	329
Statement of advances to William Means	424	331
Current account of William Means	429	334
Statement of account of Mrs. Mary Ann Adams	430	334
Statement of advances to Mrs. Mary Ann Adams	436	338
Statement of advances to Margaret A. Means	438	340
Current account of Margaret A. Means	441	341
Statement of advances to Mrs. Jane Culbertson	442	342
Testimony of Charles W. Baker	445	344
Testimony of John Means	458	355
Estimate, February 11, 1888; list of collaterals and estimated value by William Means	459	356
Letter of February 23, 1888, Henry Hanna to John Means	462	359
February 23, 1888, David Sinton to John Means	462	359

	Original.	Print.
Letter of February 20, 1888, John Means to William Means	463	360
February 21, 1888, John Means to William Means	464	361
February 23, 1888, John Means to William Means	465	361
February 24, 1888, John Means to William Means	465	362
March 5, 1888, John Means to William Means	466	362
March 9, 1888, John Means to William Means	467	363
March 21, 1888, John Means to William Means	469	365
Letters of April 2 and 21, 1888, John Means to William Means	470	366
Letters of March 26 and April 4, 1888, John Means to William Means	471	366
Letters of May 7 and 28, 1888, John Means to William Means	472	367
Letters of June 16 and July 18, 1888, John Means to William Means	473	368
Letter of July 13, 1888, John Means to William Means	474	369
July 23, 1888, John Means to William Means	475	370
July 28, 1888, John Means to William Means	475	370
August 6, 1888, John Means to William Means	476	371
August 1, 1888, John Means to William Means	477	371
August 6, 1888, John Means to William Means	477	372
August 8, 1888, John Means to William Means	478	372
October 1, 1888, John Means to William Means	478	373
October 10, 1888, John Means to William Means	479	373
October 29, 1888, John Means to William Means	480	374
October 24, 1888, John Means to William Means	481	375
November 16, 1888, John Means to William Means	481	375
November 19, 1888, John Means to William Means	482	376
November 28, 1888, John Means to William Means	483	376
December 3, 1888, John Means to William Means	483	377
Letters of April 18, 1889, John Means to William Means	484	377
May 8, 1889, John Means to William Means	485	378
May 10, 1889, John Means to William Means	487	380
June 8, 1889, John Means to William Means	488	381
May 25, 1889, John Means to William Means	489	382
June 26, 1889, John Means to William Means	490	382
July 9, 1889, John Means to William Means	491	383
Sept. 12 and 22, 1888, John Means to William Means	492	384
August 16, 1888, John Means to William Means	493	384
September 19, 1888, John Means to William Means	493	385
Statement by James McConville, receiver, of certain securities delivered to John Means	494	386
Statement of amount realized on William Means' collaterals, &c.	496	387
Statement of collaterals returned to William Means by Receiver McConville	497	388
Statement of things received from William Means himself	498	389
Statement of collateral received from Ashland National bank	499	390
Letter of May 14, 1884, John Means to William Means	500	391
May 16, 1884, William Means to John Means	501	391
September 4, 1880, John Means to William Means	501	391
September 8, 1880, William Means to John Means	502	392
November 3, 1888, John Means to William Means	504	394
February 13, 1888, John Means to William Means	504	394
February 16, 1888, John Means to William Means	505	395

	Original.	Print.
September 27, 1888, statement of account of William Means with John Means	505	395
Proposition of Means, Russell & Means to sell to "Kentucky Bellefont Iron Company," etc.	508	397
Proposition of Thomas W. Means to lease to W. W. Culbertson Princess Furnace property	510	398
Checks drawn by Thomas W. Means on Ashland National bank, Ashland, Kentucky	511	399
Copies of Exhibits 9, 10, 11, being items from books of Means & Co. credited to Thomas W. Means, etc.	513	400
Thomas W. Means, balance, August 19, 1882	523	408
January 17, 1883	526	410
January 18, 1884	528	411
Reckoning for tax-list for assessor, January 10, 1885	532	413
Thomas W. Means, balance, January 23, 1886	533	414
Reckoning for tax-list for assessors, January 23, 1886; list of bills receivable	535	415
Thomas W. Means, balance, January 31, 1887	536	415
Reckoning for assessor, January 10, 1887	538	417
Thomas W. Means, balance, January 9, 1888	539	418
Letter of October 18, 1890, Evan F. Williams to Hager	543	420
Bond of John and Margaret A. Means to Adams and Means, administrators, etc., Exhibits 20 and 21	544	421
Testimony of Thomas M. Adams	553	428
Inventory of real and personal estate of Thomas W. Means, May 3, 1890	554	429
Statement of Thomas M. Adams, committee, to Thomas W. Means, May 3, 1890	558	432
Order of William Means to executors, June 16, 1890, directing that certain notes be charged against distributable share	559	433
Letter of June 17, 1890, William Means to whom it may concern	560	434
Letter of July 28, 1890, William Means to executors	561	435
October 16, 1890, receipt of William Means for $136,000	571	443
October 31, 1890, order of William Means to pay Mary A. Adams $1,650.00	581	452
Letter of May 26, 1890, William Means to Mrs. Adams	583	453
Copy of account of William Means with Mrs. Adams	585	455
Record in Greene county common pleas court	586	457
Letter of June 15, 1891, William Means to Mrs. Adams	591	460
Sept. 28, 1891, William Means to Mrs. Adams	592	461
Feb. 23, 1888, William Means to Thos. W. Means	593	462
July 28, 1890, Jordan & Jordan and E. F. Williams to E. C. Means and Thomas M. Adams	594	462
Testimony of Thomas M. Adams (recalled)	620	485
E. C. Means	621	485
Copy of promissory note for $5,730.61 from William Means to Margaret A. Means	628	491
Copy of assignment by William Means to Margaret A. Means of part of his interest ($16,112.46) in the estate of Thomas W. Means	630	493

	Original.	Print.
Copy of assignment of William Means to Mary A. Adams	631	494
Copy of assignment of William Means to John Means	631	494
William Means in account with Margaret A. Means; statement	633	495
Copy of mortgage of William Means executed in Ironton, Ohio	647	507
Testimony of James Bull	693	545
A. C. Campbell	696	548
A. E. Lampton	698	550
James Hudson	700	551
Henry Hanna	702	553
Robert H. Ellison	706	556
E. B. Willard	709	558
William Moffet	713	562
S. W. Dakin	717	565
John F. Hager	726	573
Answer, counter-claim, and cross-petition of defendant Evan F. Williams in Boyd circuit court	737	582
Answer, counter-claim, and cross-petition of defendant Charles W. Baker in Boyd circuit court	738	582
Testimony of T. H. B. Jones	741	585
Charles Woodrow	743	586
John Means (recalled)	743	587
Deed from William Means to Evan F. Williams of property in Lawrence county, Ohio, April 21, 1890	745	588
Testimony of H. P. Whitaker	753	595
Patti Means	759	600
Argument and submission	761	601
Opinion	762	602
Final decree	784	622
Opinion on petition for rehearing	785	623
Order denying petition for rehearing	789	625
Clerk's certificate	790	625
Writ of certiorari	791	625
Stipulation and return	792	626

a United States Circuit Court of Appeals, Sixth Circuit.

BENJAMIN R. COWEN, EVAN F. WILLIAMS, and A. S. FRAZER, Trustees, Appellants,
v.
THOMAS M. ADAMS and E. C. MEANS, Executors, with the Will Annexed, of the Estate of Thos. W. Means, Deceased, and John Means, Appellees.
} No. 367.

Appeal from the circuit court of the United States for the district of Kentucky.

Record.

Original transcript filed Oct. 4, 1895.

1 TRANSCRIPT OF RECORD.

United States Circuit Court of Appeals.

BENJAMIN R. COWEN *et al.*, Trustees, etc.,
vs.
THOMAS M. ADAMS *et al.*, Adm'rs, and JOHN MEANS.

Stipulations.

The following are the portions of the record and all the record necessary to print for the hearing in the court of appeals upon the errors assigned in this cause. All of the pleadings, including amended and supplemental pleadings, the order overruling the demurrer, the order made by Judge Taft upon the supplemental petition, the opinion of Judge Barr—court below—and the portions of the various depositions and the exhibits hereinafter set forth, the portions of said depositions not hereinafter set forth to be omitted. And it is stipulated in the record that the books of account may be referred to by counsel in their argument and any portions of any accounts therein contained may be presented to the court upon the argument. Originals of any exhibits may be used upon hearing.

Copy of receipt for $136,000.

In John Means' deposition taken by complainants: Questions 1, 2, 3, 4, 5 and answers. Questions 14, 15, 16, 17, 18, 19, and answers. Questions 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 and answers. Question 59 and answer. Questions 95, 96, 97, 98, 99 and answers. Questions 110, 111, 112, 113 and answers. Questions 121, 122, 123, 124 and answers. Question 128 and answer.

2 Questions 134, 135 and answers. Questions 139, 140, 141 and answers. Questions 159, 160, 161 and answers. Questions 238, 239, 240, 241, 242, 243 and answers. Questions 252, 253, 254, 255, 257 and answers. Questions 259, 260 and answers. Questions 264, 265, 266, 267, 268, 269, 270, 271, 272 and answers. Questions

275, 276, 277, 278, 279 and answers. Questions 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295 and answers. Questions 302, 303, 304, 305, 306, 307, 308 and answers. Questions 314, 315, 316, 317, 318, 319 and answers. Questions 323, 324 and answers. Questions 326, 327 and answers. Questions 339, 340, 341, 342, 343, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356 and answers. Questions 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367 and answers. Questions 371, 372, 373, 374, 375, 376, 377, 378 and answers. Questions 389, 390, 391, 392 and answers. Power of attorney, page 70. Questions 454, 455 and answers. Questions 477 and answers. Questions 481 and 482 and answers. Question 486 and answer. Questions 488 and 489 and answers. 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559. Questions 576, 577 and answers. Questions 605, 606 and answers. Question 649 and answer. Questions 670, 671, 672 and answers. Questions 679, 681 and 683 and answers. Question 705 and answer. Questions 784, 785, 786, 787, 788 and answers. Questions 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842 and answers. Questions 861, 862, 863, 864 and answers, and exhibits. Question 866 and answer. 941 and answer. 969, 970, 971, 972, 974, 975, 982, 983 and answers. Exhibit 3, page 227, letter, February 21, 1888, John Means to William, letter, February 20th, 1888, John Means to William, page 229. Questions 1028, 1029, 1030, 1031, 1032, 1037, 1038, 1039, 1041, 1042, 1043, 1045, 1046, 1047, 1048, 1049, 1051, 1052, 1053, 1054 and answers. 1081, 1082, 1083, 1084 and answers. Questions 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109 and answers. Questions 1113, 1114, 1115, 1116, 1117, 1118 and answers. Exhibit 8, letter, William Means to John Means, dated February 23, 1888. Question 1189 and answer. Exhibit 14, letter, William to John, dated July 17, 1888. Questions 1205, 1206, 1207, 1208, 1209, 1210, 1213 and answers. Questions 1231, 1232, 1238, 3 and answers. Exhibit 17, $5,000.00 receipt. Question 1373 and answer. Questions 1401, 1402, 1403 and answers. Questions 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424 and answers. Exhibit 18, letter, John Means, Ashland, Kentucky, August 16th, 1888. Questions 1426, 1427, 1428 and answers. Exhibit 19, letter, Williams Means to John, July 12, 1888. Questions 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1446, 1447, 1448, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, and answers. Exhibit 21, letter, signsd Mollie to dear Martha. 1472, 1473 and answers. Copy of inventory of the estate of Thomas W. Means made by the appraisers, Hounshell, Richardson and Campbell. Questions 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521 and answers. Questions 1566, 1567, 1568, 1569, 1570, 1571, 1572

and answers. Questions 1587 and answer. Questions 1600, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610 and answers. Questions 1621, 1622, 1627, 1628 and answers and exhibits. Notes of William Means. Exhibit 24, letter, John Means to William, October 15, 1888. Questions 1639, 1640, 1641, 1642, 1643, 1644, 1657 and answers. Questions 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1729, 1730, 1731, 1732 and answers. Questions 1757, 1758, answers and stipulations. Questions 1760, 1762, 1763, 1764, 1765, 1766, 1767, 1768, 1770 and answers.

Exhibit 28, letter of William to John, October 29, 1888.

Exhibit 32, letter to John, April 2, 1889.

Questions 1791, 1792, 1793, 1794, 1795, 1796, 1797, 1798, 1799, 1800, 1801, 1802, 1803, 1804, 1805, and answers.

Exhibit 30, receipt of William Means, and succeeding exhibit dated February 15, 1888, signed E. C. Means.

Questions 1812, 1813, 1814, 1818, 1819, 1820, 1821, 1822, and answers.

Omit entirely the testimony of W. R. Hounshell, S. Lyons, M. H. Huston, R. Lewis, James Bull, W. C. Condit, Lewis F. Fierig, A. C. Campbell, F. W. Fierman, A. E. Lampton, Charles Means, John Russell, Jr., Richard Mather, H. C. Rurr, E. S. Wilson, Dr. N. J. Moxly, James Hudson, Fred. Kronacher, Charles Ketter,
4 Henry S. Neal, C. C. Clark, Douglass Putnam, Jr., Mrs. Luella K. Pogue, W. C. Richardson, J. B. Powell, Capt. C. M. Holloway, E B. Willard, William Moffatt, S. W. Dakin, Samuel F. Hunt, T. H. B. Jones, John Russell, D. K. Weis, F. H. Bruning, John Kobs, Ben. U. Steele, James M. Mollen, George B. Meyers, L. E. Veyzsie, Capt. James C. Whitten, William Betts, John M. Burns, Capt. Cole and Charles Woodrow.

Of the deposition of Miss Pearl Means: Questions and answers 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65.

Of the deposition of Miss Gertrude Means: Questions and answers 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60.

Of the deposition of W. W. Culbertson: Questions and answers 36, 37, 38, 39, 40, 41, and copy of release therein referred to 61, 62, 63, 64, 65, 71. Exhibit.

Of the deposition of Henry Hanna: Questions and answers 3, 4, 6, 9.

Of the deposition of Robert H. Ellison: Questions and answers 6, 9, 10, 18, 19, 20, 65, 67, 68, 69, 134.

Of the deposition of John F. Hager: Questions and answers 1, 2, 6, 7, 8, 9, 10, 17, 19.

John Means recalled, page 2111. Questions and answers 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 31, 32, 33, 34.

Copy of will of Thomas W. Means. Record and decree of Green county common pleas court. Deed of William Means to Cowen *et al.*, trustees.

The deposition of H. P. Whitaker.

Of deposition of John Means, called by defendants: Questions and answers 19, 20, 21, 22, 23, 24, 25, 26, 27, 35, 36, 37, 38, 77, 78, 81, 82, 83, 86, 112, 115, 129, 135, G, 137, 138, 139, 140, 141, 164, 165, 166, 167, 624, 625, 627, 628, 629, 630, 631, 632, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 674, 675, 679, 680, 681, 682, 689, 692, 694, 695, 696, 697, 698, 711, 712, 719, 725, 746, 747, 748, 749, 750, 751, 752, 753, 755, 756.

Deposition of Thomas M. Adams: Questions and answers 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 56, 57, 58, 67, 68, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 87, 88, 89, 90, 91, 92, 97, 98, 99, 100, 101, 102, 103, 104, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 207, 208, 209, 220, 221, 226, 227, 228, 262, 263, 264, 265, 266, 275, 276, 277, 281, 291, 292, 293, 294, 295, 296, 360, 361, 362, 363, 411, 412, 442.

Of the deposition of E. C. Means, the following questions and answers: 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 55, 56, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 96, 97, 98, 103, 104, 105, 106, 107, 108, 109, 118, 119, 120, 121, 122, 123, 124, 128, 138, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 173, 174, 175, 176, 177.

Cross examination: Cross-questions and answers 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 37, 38, 39, 40, 44, 55, 46, 47, 95, 124, 125, 126, 127, 128, 129, 130, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 183, 184, 227, 228, 229, 230, 241, 242.

Of the deposition of Evan F. Williams, the following questions and answers: 1, 2, 3, 6, 45, 46, 47, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 79, 80, 87, 88, 89, 90, 91, 96, 97, 98, 99, 105, 106, 107, Exhibit 60, 110, 111, 112, 113, Exhibit 61, 114, 115, 116, 117, 118, 119, 120, 121, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 204, 205, 206, 207, 208, 209, Exhibit 65, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 227, 228, 231, 232, 235, 236, 237, 314, 315, 316, 317, 324, 325, 326, 327, 328, 329, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 367, 368, 369, 370, 378, 379, 405, 406, 407, 408, 409, 410, 461, 462, 464, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 524, 525, 526, 527, 528, 546, 548, 557, 558, 559, 560, 561, 562, 688, 690, 691, 692, 693, 694, 812, 813, 816, 817, 899, 900, 909, 910, 911, 912, 917, 918, 919, 920, 921, 922, 923, 924, 925, 967, 968, 969, 979, 980, 981, 982, 983, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1032, 1035, 1036, 1037, 1052, 1094, 1095, 1096, 1097, 1103, 1104, 1110, 1196, 1214, 1215, 1216, 1218, 1219, 1220, 1229, 1230, 1231, 1270, 1271.

Of the deposition of John McIntyre, the following questions and answers: 28, 29, 36, 37, 39.

The entire deposition of Charles W. Baker.

J. J. GLIDDEN,
H. P. WHITAKER,
JOHN LITTLE,
Counsel for Appellants.

United States Circuit Court of Appeals for the Sixth Circuit.

B. R. COWEN *et al.*, Trustees, etc., Appellants,
vs.
THOMAS M. ADAMS *et al.*, Appellees.

In conformity with requirements of entry, in the above cause, appellees file the following schedule of parts of the record they deem pertinent to the issues involved for hearing upon this appeal, and desire to have printed as part of the record, in addition to the parts designated by appellants in their statement, and have caused copy of this to be served upon counsel for appellants within fifteen days after service upon their counsel of the statement required of appellants, by the entry aforesaid:

In John Means' deposition taken by complainants:

Questions 52, 54, 57, 61, 62, 63, 102, 104, 105, 106, 107, 108, 109, 126, 127, 136, 145, 146, 147, 149, 166, 167, 168, 169, 244, 245, 246, 247, 249, 250, 251, 258, 260, 274, 298, 300, 309, 310, 311, 312, 313, 325, 328, 329, 379, 381, 382, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 434, 435, 437, 438, 439, 442, 443, 447, 448, 475, 476, 478, 479, 480, 490, 575, 578, 579, 650, 651, 652, 653, 654, 655, 656, 662, 666, 667, 668, 669, 674, 675, 676, 677, 678, 680, 682, 686, 688,
7 689, 693, 694, 695, 700, 703, 706, 707, 708, 710, 711, 712, 847, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 896, 912, 976, 977, 978, 997, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1032, 1033, 1035, 1036, 1044, 1066, 1067, 1068, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1128.

EXHIBIT 6.

Questions 1142, 1143, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1196, 1195, 1197, 1198, 1199, 1212.

Questions 1221, 1247, 1248, 1263, 1264, 1266, 1268, 1270, 1271, 1272, 1311, 1312, 1313, 1316, 1336, 1337, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1357, 1358, 1359, 1360, 1391, 1392, 1393, 1395, 1396, 1397, 1398, 1399, 1400, 1404, 1405, 1406, 1407, 1408, 1429, 1430, 1441, 1442, 1443, 1444, 1445, 1455, 1456, 1457, 1459, 1461, 1462.

Cross-examination of John Means.

Questions 1474, 1475, 1476, 1477. Questions and answers by Mr. Glidden, 1478, 1479, 1480, 1481, 1482, 1483, 1485, 1486, 1487, 1488, 1489, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1522, 1526, 1533, 1546, 1547, 1548, 1550, 1552, 1553, 1554, 1556, 1558.

Part of page 86, Journal B. (Page 401 of Record.)
Memo. at bottom of page 87 B.

Questions 1560, 1561, 1562, 1563, 1564, 1565, 1573, 1574, 1575, 1578, 1579, 1580, 1588, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1620, 1623, 1624, 1625, 1626.

Questions 1629, 1630, 1631, 1632, 1647, 1648, 1649, 1650, 1652, 1654, 1656, 1658, 1659, 1660, 1662, 1663, 1665, 1661, 1666, 1667, 1668, 1671, 1672, 1674, 1675, 1676, 1677, 1678, 1733, 1734, 1735, 1736, 1739, 1740, 1741, 1742, 1743, 1744, 1745, 1746, 1752, 1753, 1754, 1756, 1755, 1759, 1771.

Exhibits 27, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 48, 49, 52, 54, 55, 56, 59.

Memorandum of payments to Ramsey, Maxwell and Ramsey in Labrot matter.

R. X Q. 1807, 1811, 1816, 1819.

And the answer- of the said witness to each and all of the questions designated by the numbers aforesaid, and in addition
8 to the exhibits above mentioned and those designated, by appellants, the following referred to in the deposition of John Means:

No. 1, page 184 of Record.
No. 2, page 220 " "
No. 7, letter, William to John, Feb. 21, '88.
No. 9, letter, same to same, March 23, 1888.
No. 10, letter, C. W. Baker to John Means, December 28, 1889.
No. 11, same to E. C. Means, July 17, 1890.
No. 12, Samuel F. Hunt, the same, July 30, 1890.
No. 13, letter, William to John, June 14, 1888.
No. 15, William to John, July 27, 1888.
No. 16, same to same, March 26, 1888.
Exhibits Nos. 20 and 59, together showing letter, William to John, April 16, 1888.
No. 22, William to John, September 5, 1889.
No. 23, copies of notes.
No. 25, receipts and disbursements, January 1st, 1893.
No. 28, letter, William to John, October 29th, 1888.
No. 46, same to same, May 1st, 1888.
No. 47, same to same, May 14th, 1888.
No. 50, letter, same to same, August 9th, 1888.
No. 51, same to same, August 15th, 1888.
No. 53, same to same, October 4th, 1888.
No. 57, same to same, July 9th, 1888.
No. 58, same to same, June 28th, 1888.
No. 30, receipt, W. Means to E. C. Means, October 23rd, 1890, with statement attached.

Exhibits being copies of letters from John to William Means from letter book of John are at pages 1117 and 1173 inclusive and are, each and all to be read in answer to question- calling for them, and printed in connection with those questions, and all letters, statements and papers used by John Means, as part of his deposition,

and appearing in the record, in answer to questions, and not called for by appellants, are included *by* this schedule, but in no event is any exhibit to be printed twice.

Exhibit 19, offered by defendants, letter of E. F. Williams to "My dear Hager," October 18th, 1890.

From the deposition of Evan F. Williams, taken by complainants.

Questions 48, 49, 92, 122, 161, 201, 202, 203, 213, 225, 226, 229, 230.

X Q. 238, 239, 240, 241, 242, 243, 244, 245, 246, 248, 250, 252, 256, 258, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 310, 312, 318, 319, 320, 321, 322, 323, 343, 344, 345, 346, 347, 348, 349, 350, 351, 364, 365, 366, 371, 372, 373, 374, 375, 376, 377, 380, 381, 382, 383, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423. 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 515, 516, 517, 518, 519, 520, 521, 522, 523, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544. 545, 547, 550, 551, 552, 553, 554, 555, 556, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593. 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 667, 668, 669, 670, 671, 672, 675, 689, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 814, 815, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 901, 902, 903, 904, 905, 906, 907, 908, 909, 913, 914, 915, 916, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 970, 971, 972, 973, 974, 975, 977, 984, 985, 986, 987, 988, 989, 990, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1033, 1034, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048,

1049, 1050, 1051, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1173, 1874, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1098, 1099, 1100, 1101, 1102, 1105, 1106, 1107, 1108, 1109, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1217, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1232, 1233, 1245, 1246, 1247, 1248, 1249, 1250, 1269, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1280, 1281, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1302, 1304.

John McIntyre called for complainants.

Questions 56, 57, 58, 59, 60, 61, 62.

Statement by Mr. Glidden.

Statement by Mr. Maxwell.

Questions 63, 64, 66, 67, 68, 69, 70.

John Russell called for complainant.

Questions 18.

Cross-examination of Pearl Means, called for complainants.

Question- 78, 79, 80, 81, 82, 83, 84, 85, 86, 87.

All parts of the deposition of E. C. Means for defendants, not designated by appellants in their statement, except questions 90, 91, 92, and the answers thereto. Schedule to be printed as part of the record, all exhibits referred to, and especially the account of William Means with Margaret A. Means, commencing at page 1545 of Record. The Exhibits so required are Nos. 1, 2, 3, at pages 1542, *a*, *b*, *c*. Number 4, page 1445, &c., and copy mortgage, William Means to Evan F. Williams, October 18th, 1890, at page 1570, &c.

11 All parts of the deposition of T. M. Adams for respondents, not designated by the statement of appellants, including the exhibits therein, and only omitting from the record the following questions and answers thereto:

Questions 3, 5, 6, 7, 8, 9, 10, 16, 106, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 214, 215, 216, 218, 219, 222, 278, 279, 280, 282, 283, 284, 285, 286, 303, 304, 305, 306, 307, 319, 320, 331, 374, and the trial balance marked "Exhibit 25," at page 1466; and also omit objections and colloquy of counsel following question 378, and omit questions and answers 386, 387, 388, 389, 390, 391, 392, 393, 394, 397, 398, 399, 400, 401, 402, 403, 404, 405, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424.

The exhibits referred to in the depositions of T. M. Adams desired to be printed as part of the record are scheduled as follows:

First, inventory of the real and personal estate of T. W. Means, by T. M. Adams, committee.

Order of William Means, dated June 16th, 1890, directing executor to charge indebtedness against distributive share.

Paper stating object of same.

Revocation of same.

Marginal entry on same.

Twenty-six thousand receipt.

Assignment of William Means of interest in estate to pay $1,650 to Mary A. Adams.

Letter of William Means to Mrs. Adams, dated May 26th, 1890.

Number 24, statement William Means' account with Mrs. Adams.

No. 25, letter, William Means to Mary A. Adams, June 15, 1891.

Letter, same to same, Sept. 28, 1891.

Letter, William Means to T. W. Means, February 23, 1888.

Letter, Jordan & Jordan and Evan F. Williams to E. C. Means and T. M. Adams, dated July 28, 1890.

James Bull, called for defendants. Questions 1, 2, 3, 4, 5, 6, 7, 8, 9, 35, 36, 37, 38, 39, 40, 41, 42, 48, 49, 50, 51, 52, 53.

A. C. Campbell, called for defendants. Questions 1, 3, 4, 5, 6, 7, 8, 9, 10, 33, 34, 35, 36.

12 A. E. Lampton, called for defendants. Questions 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22.

James Hudson, called for defendants. Questions 1, 2, 3, 4, 5, 6, 7, 12, 13, 14, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39.

Henry Hanna, called for defendants. Questions 1, 2, 7, 8, 10, 11, 12.

Robert H. Ellison, called for defendants. Questions 1, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24.

X Q. 55, 56, 64, 65, 71, 84, 87.

E. B. Willard, called for defendants. Questions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 37, 38, 39, 40, 41, 42, 43, 45, 46.

William Moffet, called for defendants. Questions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 181.

S. W. Dakin, called for defendants. Questions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, X 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75.

Re-examination. Questions 76, 77, 78, 79.

John F. Hager, called for defendants. Questions 3, 4, 11, *11*, 12, 13, 14, 15, 16.

Certified copies of the answers of Baker and Williams referred to in the answer to above question 23.

Testimony of John F. Hager. Questions 29, 30, X 35, 37, 38, 40, 41, 42, 43, 50.

T. H. B. Jones, called for defendants. Questions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15.

Charles Woodrow, called for defendants. Questions 1, 2, 3, 5, 6, 7, 8, 9.

John Means, recalled for defendants. Questions 1, 2, 3, 4, 5, 6, 7.

Copy of deed, Williams Means to Evan F. Williams.

Cross-examination. Questions 40, 41, (31).

Redirect examination, designated as cross-examination, being page 2121, on the Record; also page 2120.

Exhibit offered by defendants, page 1229, contract of 18 July, 1884, between T. W. Means, J. Russell and H. Means and the Ky. Bellefonte Iron Company.

LAWRENCE MAXWELL, JR.,
JULIUS L. ANDERSON,
JOHN F. HAGER,
Attorneys for Appellee.

13 United States Circuit Court, District of Kentucky.

BENJAMIN R. COWEN, EVAN F. WILLIAMS, and A. S. FRAZER, Trustees of an Express Trust, Complainants,
vs.
THOMAS M. ADAMS and E. C. MEANS, Administrators, with the Will Annexed, of the Estate of Thomas W. Means, Deceased, and John Means, Respondents.

Bill in Equity.

To the honorable judges of said court:

Your orators say that they are, each and all of them, residents and citizens of the State of Ohio, and that the respondents are, each and all of them, residents and citizens of the State of Kentucky.

Your orators say that by the consideration of the common pleas court in and for the county of Greene, and State of Ohio, at the May term of said court, A. D. 1891, said court by decree then entered in a cause then pending in said court, between William Means and Martha E. C. Means, his wife, and Gertrude E. Means, and Pearl E. Means, and Patti Means, a minor, by her next friend, her said mother, found and adjudicated that the said William Means, in the lifetime of Thomas W. Means, for a good and valuable consideration, entered into an agreement with his said wife and children, whereby he agreed to settle upon his said wife and children, through trustees, as and for a reasonable settlement in equity, for the maintenance and support of said family, his interest in expectancy in the estate of his father, Thomas W. Means, and agreed further that upon the death of the said Thomas W. Means, he would execute any and all further necessary conveyances or transfers to completely vest in trustees the title to his said interests to said property, both real and personal. And said court, by its decree, further found that said agreement was a valid, binding agreement in equity, and decreed its specific performance, and found that the said William Means had refused to carry the same out, and to execute the same; and
14 by its decretal order directed the said William Means to execute a deed, conveying the one-fifth interest in the estate of

Thomas W. Means, the same being the interest that was devised to William Means, to your orators as trustees of the trust then and thereby established; and further decreed that in the event of the failure of the execution of said deed by said William Means within thirty days from the rendition of said decree, that said decree should operate as such conveyance and invest your orators, as such trustees, with the title to said property for the purposes of said trust, being for the support and maintenance of said family; that each of said trustees has qualified, and that they are now the duly qualified trustees of said trust.

That said Thomas W. Means died intestate on or about the 8th day of June, A. D. 1890; that by the provisions of his said will he devised the undivided one-fifth part of his entire estate, real and personal, to William Means; and by a clause in said will stipulated that he had theretofore made advances to certain of his children, and contemplated making future advances, and that the interest devised by his will should not be subject to such advances; and, thereby, converted all said advances into executed ante-mortem gifts; that said Thomas W. Means left a very large estate, consisting exclusively of personal property, and worth, as your orators are informed and believe, nearly, if not quite, a million of dollars; that the respondents Thomas M. Adams and E. C. Means, were duly appointed, and have qualified, and are now the acting, qualified administrators with the will annexed of said estate; that your orators have demanded of the said administrators the property in their hands belonging to them as such trustees; and said administrators have refused and neglected to pay to your orators, or to transfer to your orators any of said money or property, and still so refuse; that all of said estate has come into the hands of said administrators; that there are no debts of the said Thomas W. Means' estate remaining unpaid; that since the appointment of said administrators they have made a distribution to each of the other four devisees of said will of the sum, to each in money, of more than forty-four thousand ($44,000) dollars, and have not distributed to your orators or to any one in their behalf, or in behalf of the said interest which they hold and represent in said estate, any amount or sum whatever, and wrongfully so refuse to distribute it.

That the beneficiaries of the trust of which your orators are trustees, to wit, the family, wife and children, of the said William
15 Means, are without adequate means of subsistence and support except as the same is to be obtained from this trust; that they consist of a mother and her three daughters, residing at the family homestead in Yellow Springs, O., and are, each and all of them, citizens of the State of Ohio.

That your orators are informed and charge that the said administrators, respondents herein, having then knowledge of the fact of the rights of the beneficiaries of said trust, entered into a fraudulent combination with William Means, by which they attempted to secure from William Means a receipt as and for so much of the distributive portion of the estate of Thomas W. Means which belongs to, and would come to your orators as trustees for the purposes of

said trust, as was claimed to be represented by certain notes and memoranda executed by William Means, which notes and memoranda evidenced amounts that had been advanced to William Means in the lifetime of Thomas W. Means, and which, by the express provisions of the will, were not to be charged against the distributive portion of the devisee; and then agreed with the said William Means that if he, the said William Means, would execute to them a receipt for the sum—in the aggregate of one hundred and thirty-six thousand ($136,000.00) dollars, as and for so much of the distributive share so devised in the will of Thomas W. Means to William Means, that they would give to the said William Means twenty-five thousand ($25,000.00) dollars in money, and surrender to him said notes and memoranda; thereby intending to defeat the just claims of these trustees and their beneficiaries.

That, in pursuance of said combination, William Means did, on or about the 16th day of October, A. D. 1890, execute a receipt in the words and figures following, to wit:

"ASHLAND, KY., *October* 16, 1890.

Rec'd of Thos. M. Adams and E. C. Means, administrators of Thos. W. Means, with the will annexed, the sum of $136,035.75, being part of my distributive share, as legatee under said will, applied by them as ordered by me upon the following notes and claims, owed by me to the estate of said decedent, and payable to his order, to wit: $49,995 applied on note dated 22nd of November, 1888, interest from Dec. 1, 1888; note, $45,000; $5,685.32 applied on note dated August 20, 1888, one day, $5,041.67; $6,075.50 applied on note dated November 9, 1888, one day, $75,000; $8,301.56 applied on note dated September 25, 1888, one day, $7,400; $1,803.33 applied on note dated November 17, 1888, $600; $2,345.70
16 applied on note dated October 24, 1888, note, $2,100; $554 applied on note dated November 9, 1888, note $497.13; $6,583.64 applied on note dated March 19, 1888, note, $15,027.05; $51,677.90 applied on due bill dated February 15, 1888, note, $125,911.74; $3,013.26 applied on note dated December 3, 1888, note, $2,713.88.

This receipt is given in pursuance of settlement made October 6, 1890.

WM. MEANS.

Attest:
JOHN F. HAGER.
A. E. LAMPTON."

And did deliver the same to said administrators. Thereupon said administrators refused to pay to said William Means said twenty-five thousand ($25,000.00) dollars in money, or any part thereof.

That the said administrators wrongfully and fraudulently set up said receipt, so procured by them, as a *pro tanto* distribution on account of the one fifth interest to which your orators are entitled.

Your orators aver that said receipt was but an incomplete attempt to secure an acknowledgment by the said William Means, which, if secured with his assent, would have been invalid and void as to your orators; but is invalid and void from the further consideration of the refusal of said administrators to comply with the terms of their fraudulent compact.

That your orators further aver that the said administrators have in their hands all the assets of said estate, and there is no reason why they should not be required now to distribute the same; the debts of said estate, and the specific charges of said will have been all paid and satisfied.

That in the lifetime of said Thomas W. Means, and some years prior to his death, he became and was, by reason of age and other infirmaties, an imbecile, incompetent to contract or to transact any business of any kind. That during all said years of imbecility and incompetency of the said Thomas W. Means, the respondent, John Means, who was his eldest son, conducted and managed the business of the estate of the said Thomas W. Means, as a self-constituted trustee, acting under and in pursuance of a power of attorney, claimed to have been executed by Thomas W. Means prior to his said imbecility and incompetency.

17 That your orators are informed and charge that no settlement of any kind has ever been made of the transactions and management of said John Means as such self-constituted trustee or agent. That the affairs were large and multifarious, involving large transactions and large amounts. That your orators have no means of knowing as to whether such transactions were conducted with a proper regard for the interests of said trust, and the estate of said Thomas W. Means, but are informed that the same was not so managed and so controlled. And that upon a just and equitable settlement of said transactions under the rules of equity applicable to, and controlling and governing the conduct of such trustees, there is now in the hands of, and due from said John Means to said estate a large sum of money, the amount of which your orators cannot state, and in which your orators are interested, as such trustees, to the extent of one-fifth interest.

Your orators further aver that they have no means of acertaining said amount, except by an accounting to be had by this court, through its officers, of the various transactions had and business done and conducted by said John Means, as such self-constituted trustee, during the said entire time. That the said E. C. Means is the son, and the said Thomas M. Adams the nephew of the said John Means, and are, as your orators are informed and believe, under the dominion and control of said John Means. And it is necessary, as your orators believe, for the protection of their interests, that an accounting be had with the said John Means, by this court, through its officers.

Wherefore, your orators pray that a writ of subpœna of this court be issued to the said Thomas M. Adams and E. C. Means, as administrators of the estate of Thomas W. Means, with the will annexed, and to John Means, requiring them to appear and answer this bill;

and that this court award to your orators the relief by the order of this court, ordering a decree that the said Thomas M. Adams and E. C. Means pay over to your orators the full one-fifth interest of the estate of the said Thomas W. Means; and that they now pay over, and pay into this court for the use of your orators, the sum equal to the amount that has heretofore been distributed to each of the said other four devisees of said estate, to wit: A sum in excess of forty-four thousand ($44,000.00) dollars, for the purposes of said trust; and that this court, also, set aside and hold for naught the said pretended receipt, and order that the same be delivered up for cancellation; and that this court order an account to be made by
18 the said John Means of the administration by him of his self-assumed trust in the management and control of the estate of the said Thomas W. Means, during the time of the imbecility and incompetency of the said Thomas W. Means to transact business. And that the court direct and decree the payment of the one-fifth of the amount found upon said accounting to be still due from the said John Means to said estate, to your orators, and for all other and further relief to which your orators may be, in the premises, entitled in equity.

And your orators will ever pray.

B. R. COWEN.

J. J. GLIDDEN,
JOHN LITTLE, AND
H. P. WHITAKER, *Solicitors.*

Endorsed: 1774. B. R. Cowen *et al. vs.* Thos. M. Adams *et al.* Bill. Filed Nov. 16th, 1891. Jos. Finnell, clerk.

In the United States Circuit Court in and for the District of Kentucky.

BENJAMIN R. COWEN, A. S. FRAZIER, and EVAN F. WILLIAMS, Trustees, Complainants,
against
THOMAS M. ADAMS and E. C. MEANS, Adm'rs, with Will Annexed, of Thos. W. Means, Deceased, and John Means, Defendants. } No. 1774.

Demurrer of the Defendant John Means to the Bill.

The defendant, John Means, demurs to the bill of complainants upon the following grounds:

1. For want of equity, in that the complainants are not entitled upon their said bill to the relief they pray for.

2. Because their said bill is multifarious.

JOHN F. HAGER,
RAMSEY, MAXWELL & RAMSEY,
Attorneys for John Means, Def't.

19 We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

LAWRENCE MAXWELL, JR.,
JOHN F. HAGER,
Counsel for John Means.

In the United States Circuit Court in and for the District of Kentucky.

BENJAMIN R. COWEN, A. S. FRAZIER, and EVAN F. WILLIAMS, Trustees, Complainants,
against
THOMAS M. ADAMS, and E. C. MEANS, Administrators, with Will Annexed, of Thomas W. Means, Deceased, and John Means, Defendants.

I, John Means, defendant in the above cause, being duly sworn, do say that the demurrer interposed by me to the bill of complaint herein is not interposed for purposes of delay.

JOHN MEANS.

Subscribed and sworn to before me this 1st day of January, 1892.
[SEAL.]
D. W. STEELE, JR.,
Notary Public.

Endorsed: No. 1774. United States circuit court in and for district of Kentucky. Cowen *et al.*, trustees, *vs.* Adams and Means, adm'rs, and Jno. Means. Demurrer of Jno. Means to bill. Filed January 4th, 1892. Jos. C. Finnell, clerk. Ramsey, Maxwell & Ramsey, John F. Hager, counsel of Jno. Means.

20 In the United States Circuit Court in and for the District of Kentucky.

BENJ. R. COWEN *et al.*, Trustees, Complainants,
against
THOMAS M. ADAMS and E. C. MEANS, Administrators, and JOHN MEANS, Defendants. } No. 1774.

Demurrer of the Defendants Thos. M. Adams and E. C. Means, Administrators, to the Bill.

The defendants Thomas M. Adams and E. C. Means, administrators with the will annexed of Thos. W. Means, deceased, demur to the bill of complainants upon the following grounds:

1. For want of equity, in that the complainants are not entitled upon their said bill to the relief they pray for.
2. Because their said bill is multifarious.
3. For want of parties, in that the said Wm. Means is not joined as complainant or made defendant.

JOHN F. HAGER AND
RAMSEY, MAXWELL & RAMSEY,
Att'ys for Thos. M. Adams and E. C. Means, Adm'rs.

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

LAWRENCE MAXWELL, JR.,
JOHN F. HAGER,
Counsel for Administrators of Thos. W. Means.

21 In the United States Circuit Court in and for the District of Kentucky.

BENJAMIN R. COWEN, A. S. FRAZIER, and EVAN F. WILLIAMS, Trustees, Complainants,
against
THOMAS M. ADAMS and E. C. MEANS, Administrators, with Will Annexed, of Thomas W. Means, Deceased, and John Means, Defendants.

We, Thomas M. Adams and E. C. Means, defendants in the above cause, being duly sworn, do say that the demurrer interposed by us to the bill of complaint herein is not interposed for purposes of delay.

T. M. ADAMS,
E. C. MEANS,
Administrators, with Will Annexed, of Estate of Thos. W. Means, Deceased.

Subscribed and sworn to before me this 1st day of January, 1892.

[SEAL.] D. W. STEELE, JR.,
Notary Public.

Endorsed: 1774. In the United States circuit court in and for the district of Kentucky. B. R. Cowen and others, trustees, *vs.* Adams and Means, adm'rs, and John Means. Demurrer of Adams and Means, adm'rs, to bill. Filed January 4, 1892. Jos. C. Finnell, clerk. Ramsey, Maxwell & Ramsey, John F. Hager, counsel for Adams and Means, administrators.

22 U. S. Circuit Court, District of Kentucky.

B. R. COWEN *et al.*
vs.
THOMAS ADAMS *et al.*

I consent to enlarge the time for filing the amendment to the bill prescribed in the order of January 18, 1892, until February 5, 1892, without prejudice to the objections heretofore taken.

LAWRENCE MAXWELL, JR.,
Att'y for D'f'ts.

Endorsed: 1774. B. R. Cowen *et al. vs.* Thos. M. Adams *et al.* Agreement. Filed February 5, 1892. Jos. C. Finnell, clerk, by F. D. Cochran, D. C. Filed Oct. 4, 1895. Frank O. Loveland, clerk.

United States Circuit Court, District of Kentucky.

B. R. COWEN, EVAN F. WILLIAMS, and A. S. FRAZER, Trustees of an Express Trust, Complainants,

vs.

THOMAS M. ADAMS and E. C. MEANS, Administrators, with the Will Annexed, of the Estate of Thomas W. Means, Deceased, and John Means, Respondents.

Amendment to Bill in Equity.

To the honorable judges of said court:

Your orators, by way of amendment to their said bill and in addition to the allegations thereof, under leave of the court say, your orators are informed and charge that said executors though knowing of the transactions set forth in said bill pertaining to John Means, refuse to investigate and inquire into the same, and
23 to require him to account in that behalf; on the contrary they have been and are colluding with him to hinder, delay and prevent an inquiry into said transactions, and a true disclosure of his indebtedness to said estate with the purpose and effect of defrauding your orators and preventing them from recovering their proper proportion of said estate, and thereby, and by reason thereof, your orators have no remedy to recover the amount properly due them, unless this court award in this action an accounting with the said John Means as prayed for in said original bill.

And your orators pray for the relief as prayed in their original bill, and for such other and further relief as they are in equity entitled to in the premises.

B. R. COWEN.

J. J. GLIDDEN,
JOHN LITTLE, AND
H. P. WHITAKER,
Solicitors.

Sworn to before me and subscribed in my presence this 5th day day of February, 1892.

[SEAL.]

B. E. DILLEY,
Deputy Clerk.

Endorsement: No. 1774. U. S. circuit court, district of Kentucky. B. R. Cowen, Evan F. Williams, and A. S. Frazer, trustees, etc., *vs.* Thomas Adams, E. C. Means, administrators, etc., and John Means. Filed February 5th, 1892. Jos. C. Finnell, clerk, by F. D. Cochran, D. C. Amendment. Bill in equity. J. J. Glidden, H. P. Whitaker and John Little, solicitors for complainants.

Circuit Court of the United States, District of Kentucky, at Covington, Special Term.

MONDAY, *January 18th, A. D.* 1892.

Present: Hon. Howell E. Jackson, circuit judge.

BENJ. R. COWEN *et al.*, Trustees, &c.,
vs.
THOS. M. ADAMS *et al.*, Adm'rs, etc., and JOHN MEANS.

This cause coming on to be heard upon the demurrers of Thos. M. Adams and E. C. Means, administrators of Thos. W.
24 Means, deceased, and of John Means, to the bill of complaint as amended by the supplemental bill, on consideration whereof, the court being advised, the demurrer of John Means is sustained on the ground of multifariousness, and the demurrer of said administration is sustained on the grounds of multifariousness, but overruled on the ground of want of equity, and leave is given the plaintiffs to amend their bill within ten days.

UNITED STATES OF AMERICA,
District of Kentucky.

I, Jos. C. Finnell, clerk of the circuit court of the United States for the sixth judicial circuit and district of Kentucky, at Covington, do hereby certify that the foregoing is a true and correct copy of an entry made in the case set out in the caption hereto, as the same appears from the records of this office.

Witness my hand, as clerk, and the seal of said circuit court, at Covington, this 11th day of February, A. D. 1896.

[SEAL.] JOS. C. FINNELL, *Clerk.*

Endorsed: Filed February 12th, 1896. Frank O. Loveland, clerk.

Circuit Court of the United States for the District of Kentucky, in the Sixth Circuit.

To the judges of the circuit court of the United States for the district of Kentucky:

Evan F. Williams, Benjamin R. Cowen and A. S. Frazier, trustees, and each of them citizens of the State of Ohio, by leave of court file this their supplemental bill against John Means, a citizen of the State of Kentucky, and E. C. Means and Thomas Adams, executors of the estate of Thomas W. Means, deceased, and each and both of them citizens of the State of Kentucky.

And thereupon your orators complain and say, that since the filing of the original bill herein, to wit, on or about the 26th day of December, A. D. 1891, William Means executed and delivered to your orators, as trustees of the trusts set forth in the original bill filed herein, his deed duly executed, by the recitals whereof he con-

veyed to your orators as trustees of the express trust set forth
25 in the original bill and in pursuance of the agreement made by him in the lifetime of Thomas W. Means, and in compliance with the terms of the decree of the Greene county, Ohio, common pleas court in that behalf made and entered and as set forth in the original bill, all his interest in the estate of the late Thomas W. Means, either as heir-at-law or as devisee under the will of said Thomas W. Means, and including real estate and personal property and rights of every kind, thereby fully executing upon his part his said agreement and complying with the decree of the Greene county common pleas court as set forth in the original bill and thereby investing your orators with all the interests and rights of every kind which the said William Means had or could or would have as heir-at-law or devisee under the will of the late Thomas W. Means.

Wherefore your orators pray that they may be awarded the relief as prayed for in the original bill herein.

BENJAMIN R. COWEN.

J. J. GLIDDEN,
JOHN LITTLE, AND
H. P. WHITAKER,
Solicitors.

STATE OF OHIO, }
County of Hamilton, } ss:

Benjamin R. Cowen, being first duly sworn, deposes and says, that he believes the statements contained in the above and foregoing supplemental bill to be true.

BENJAMIN R. COWEN.

Sworn to before me and subscribed in my presence this 18th day of January, A. D. 1892.

[SEAL.] ROB'T C. GEORGI,
Deputy Clerk U. S. Circuit Court, S. D. O.

Clerk's fees, 50 cents. Paid.

Endorsed: No. 1774. U. S. circuit court, district of Kentucky. B. R. Cowen, Evan F. Williams and A. S. Frazier, trustees, etc., *vs.* Thomas M. Adams and E. C. Means, administrators, etc., and John Means. Filed January 18th, 1892. Jos. C. Finnell, clerk. Supplemental bill. J. J. Glidden, John Little and H. P. Whitaker, solicitors.

26 United States Circuit Court, District of Kentucky.

B. R. COWEN, EVAN F. WILLIAMS, and A. S. FRAZER, Trustees of an Express Trust, Complainants,
against
THOMAS M. ADAMS and E. C. MEANS, Administrators, with the Will Annexed, of the Estate of Thomas W. Means, Deceased, and John Means, Respondents.

The Answer of John Means, Defendant, to Bill and Amended Bill of Complaint.

The defendant, John Means, for answer to so much of the said bill and amended bill of complainant herein as he is advised it is necessary or material for him to answer unto, says:

He denies that Thomas W. Means for years before his death, or for any period more than one year next theretofore became or was by reason of age or other infirmities, or at all, an imbecile or incompetent to transact business.

This defendant admits that he acted for several years before the death of Thomas W. Means under and in pursuance of a power of attorney, executed by Thomas W. Means, assisting his said father in transacting the details of his extensive business, and that, as his father grew older he gave more minute attention to his business affairs; but all this was done at the request of said Thomas W. Means, and with the knowledge, assent, and approval of all the children of said Thomas W. Means, and as agent and attorney, under the power aforesaid. And from the time the said Thomas W. Means became incompetent to manage his business according to a fixed purpose of his own, the dealings of this defendant therewith were mainly confined to the duty of collecting and preserving the rents, and other incomes of the said estate, which duty this defendant avers was performed with fidelity in all respects and to the best interest of all concerned therein.

27 And defendant says that all his transactions for the said Thomas W. Means are set forth in the books of said Thomas W. Means by entries made, concurrently with said transactions, and were correctly and truly made, and show a just and true account thereof. That upon appointment of Thomas M. Adams by competent authority, as committee of the person and estate of Thomas W. Means, he delivered to said committee all books, papers and effects of said Thomas W. Means in his custody, showing fully therein a complete record and account of his acts and doings for said Thomas W. Means, and the said committee, as in duty bound, so accepted same.

Defendant denies that his transactions in connection with the business of Thomas W. Means were not conducted with proper regard for the interest of said Thomas W. Means, and denies that upon any or further settlement thereof there will be found, or that there is, due from this defendant to the estate of Thomas W. Means any sum or amount whatever.

As before stated, the account of the transactions of this defendant with the business affairs of Thomas W. Means are contained in the books of Thomas W. Means in the control of his administrators, access to which, as defendant is informed and believes, has not been, and will not be, denied, at all reasonable times to the complainants and their duly accredited representative.

And further answering defendant says: He has at no time attempted or indulged the purpose of attempting to control or influence the act of the said administrators, or of either of them, in discharging the duties of the said trust, nor does he believe, if he had the purpose or motive of influencing them to an improper or wrongful act, he could lead them to disregard their sworn obligation and duty to faithfully execute said trust.

And in answer to allegations contained in amended bill of complai*nant* herein, defendant says:

That — is not true, and he denies that said administrators are or have been colluding or in collusion with him to hinder, delay or prevent inquiry into his said transactions as agent of Thomas W. Means, or disclosure of any indebtedness of defendant to estate of said Thomas W. Means, with any purpose, or with the purpose or effect of wronging or defrauding complainants, or preventing them from recovering any portion of the said estate, or that by reason of any collusion or wrongful act or purpose of said ad-
28 ministrators, or this defendant, the complainants are or have been hindered or obstructed in any right, interest, or claim of either, against this defendant.

And having thus fully answered said bill, and amended bill, this defendant prays to be hence dismissed with costs.

JOHN F. HAGER AND
LAWRENCE MAXWELL, JR.,
Counsel for the Defendant John Means.

UNITED STATES OF AMERICA, }
District of Kentucky. }

I, John Means, defendant in the cause entitled in the caption of the answer to which this is attached as part, having read the said answer, and being duly sworn, do say that the statements contained in said answer made as of my own knowledge are true, and those made on information I believe to be true.

JOHN MEANS.

Subscribed and sworn to by John Means before me this 4th day of March, 1892.

[SEAL.]

JOHN RUSSELL, JR.,
Notary Public.

Endorsed: No. 1774. United States circuit court, district of Kentucky. B. R. Cowen *et al.*, trustees, *vs.* Adams and Means, adm's. Answer of John Means to bill and amended bill of complaint. Filed March 7th, 1892. Jos. C. Finnell, clerk, by F. D. Cochran, D. C. Jno. F. Hager, Lawrence Maxwell, Jr., counsel for defendant John Means.

29 United States Circuit Court, District of Kentucky.

BENJAMIN R. COWEN, EVAN F. WILLIAMS, and A. S. FRAZIER, Trustees of an Express Trust,

vs.

THOMAS M. ADAMS and E. C. MEANS, Administrators, with Will Annexed, of the Estate of Thomas W. Means, Deceased, and John Means.

The Joint Answer of Thomas M. Adams and E. C. Means, Administrators, with Will Annexed, of Thomas W. Means, Deceased.

The defendants, answering bill of complainants herein, say:

That decedent, Thomas W. Means, prior to 1880, had made two wills, in each of which he had made equal provision for his children hereinafter named; and they further say:

That decedent, Thomas W. Means, mentioned in plaintiff-' bill, died testate in Boyd county, Kentucky, 8th June, 1890, leaving an estate, including $136,035.75 hereinafter mentioned, estimated as of about the value of seven hundred and fifty thousand dollars, all of which by his will in said bill mentioned, after making certain unimportant specific bequests, he bequeathed and devised to his four surviving children, John Means, William Means, Mary A. Adams, Margaret A. Means, and his grandson, T. M. Culbertson, only child of his deceased daughter, Sarah J. Culbertson, to be divided equally among them.

That at the date of the execution of said will, July 20th, 1880, said testator, Thomas W. Means, had made advances to his children, respectively, that were charged on his books, amounting as follows:

To John Means	$79,314.36	and $80,000
To William Means	$58,409.54	and $80,000
To Mary A. Adams	$51,207.48	and $80,000
To Margaret A. Means	$44,401.35	and $80,000
To Sarah J. Culbertson (then deceased)	$29,609.82	and $80,000

and afterwards made advances to them, respectively, all of
30 which, were charged on his books, amounting as follows:

To John Means	$20,685.64
To Williams Means	$41,590.46
To Mary A. Adams	$48,792.52
To Margaret A. Means	$55,568.65

That said advances were given, and by said testator, as well as by his said children, respectively, were at all times considered and treated, all and singular, as advancements and in no sense as loans, and all of same were advancements and not loans, and it was with reference to such advancements, made and to be made, and not with reference to loans, which said testator was accustomed to make to his children, taking notes therefor, that the testator provided by the fifth clause of his will as follows: "I have made advances to my

said children which are charged to them respectively on my books, and I may make further advances to them respectively or to some of them and to my said grandson which may be charged on my books to their respective accounts. I desire the equal provision herein made for said children and the provision for said grandson to be a provision for them respectively in addition to said advances made and that may hereafter be made and that in the division, distribution and settlement of my said estate said advances made and that may hereafter be made, be treated not as advancements but as gifts not in any manner to be accounted for by my said children and grandson or any of them or the issue of any of them."

And the foregoing are all the provisions of said will as to advances made or to be made.

That said testator for a number of years before his death was feeble in body to such an extent that it would have overtaxed his strength to look after the details of his extensive business, and his son, John Means, actuated by filial affection and duty, and a proper regard for the interests of all concerned, under an power of attorney constituting him agent and attorney-in-fact, executed by said testator, and requested by said Thomas W. Means so to do, looked after the details of the larger part of his father's business, and in the last three or four years of his life, when, as was well known to all of his said children, he had, by reason of great age and consequent infirmities, become and was in need of assistance in attention to details of his business, said John Means, with the full knowledge, acquiescence, assent and approval, as these respondents are informed
31 and believe, of said William Means and of all of said testator's children, continued to look after his father's business as before as agent and attorney-in-fact under said power of attorney.

That during said period, in the year 1888, William Means, having full knowledge of the execution of said will, and of its provisions as to advancements, being in pressing need of money, applied to John Means as said agent and attorney of his father for large loans to him of his father's funds, at the same time expressly promising and agreeing, as these respondents are informed, believe and charge to be true, to repay same, after applying the proceeds of certain securities delivered therewith as collateral security, out of his distributive share of his father's estate. Thereupon said John Means, relying upon said promises and agreements of said William Means in respect of charging his interest in the estate of his father as ultimate security for repayment thereof, made sundry loans of the funds of said Thomas W. Means to William Means aggregating two hundred and eighty thousand three hundred and eleven and $\frac{42}{100}$ dollars ($280,311.42), or more, and William Means executed and delivered the promissory notes and due bills mentioned in complainants' bill, payable to the order of Thomas W. Means, on some of which, and before the death of his father, said William Means caused large payments to be made, so that on the 6th day of October, 1890, there remained unpaid of principal and interest thereon but one hundred and thirty-six thousand thirty-five and seventy-five one-hundredths

dollars ($136,035.75), which sum was due from William Means on said notes and due bills to said estate.

And these defendants say that none of said sums so paid to said William Means or remaining due from him, were, or were understood to be, advancements under the provisions of the will or otherwise, but on the contrary that they were, and at the time were expressly understood to be, and by said William Means were declared to be loans to him, and accordingly on or about June 16th, 1890, immediately after the death of said Thomas W. Means, said William Means executed and delivered to the defendant Thomas M. Adams a writing in the words and figures following, the notes therein referred to being the notes aggregating said balance of $136,035.75, viz:

"JUNE 16, 1890.

I hereby direct the executors of the will of Thomas W. Means, or the personal representatives hereafter to be appointed, to
32 charge against my distributable share as heir-at-law of Thomas W. Means or as devisee under his will the notes heretofore given by me to Thomas W. Means; and I do further hereby assign such interest or share or sufficient thereof to pay and discharge such notes.

WILLIAM MEANS.

Witness:
JAMES MEANS.
MRS. S. B. DREHNEN."

And in pursuance of the duty of these respondents under the law, of the agreement and promise of said William Means to pay said debts out of his said share, and of said order to pay same out of his share, these respondents, as said administrators, charged same against his said share, and William Means executed and delivered to them the receipt in the bill mentioned for $136,035.75 as and for so much of his distributive share of said estate received by him, and thereupon, in consideration of the premises, these respondents delivered the notes and due bills in said receipt mentioned, but not in all respects as to amounts as in the copy of receipt set out in plaintiff's bill. The defendants file herewith, as an exhibit to this answer, a true copy of said receipt.

These respondents say that attached to note for seventy-five thousand dollars ($75,000) in said receipts mentioned and surrendered therewith to William Means was a writing signed and delivered by William Means with such note in words and figures following:

"It is agreed as a part of the transaction by which I have procured a loan of seventy-five thousand dollars ($75,000) upon the foregoing note, that the amount thereof and all interest shall be paid from my interest as devisee or distributee of the estate of Thomas W. Means.

November 9, 1888.

(Signed) WILLIAM MEANS."

And the said William Means executed similar writings, except as to the date and amount of money in the particular transaction, and attached same to each of the following notes mentioned in said receipt, viz:

Note forty-five thousand dollars ($45,000), Nov. 22, 1888.

Note one thousand six hundred and twenty dollars ($1,620), November 17th, 1888, and requested, in writing, the payment of sums evidenced by note for $15,027, March 19, 1888, receiving same as a loan by said Thomas W. Means.

These respondents deny that the consideration for the exe-
33 cution or delivery of said receipt was in whole or in part the pretended agreement to pay to William Means twenty-five thousand dollars, or any other sum, and they say that neither of them ever made with William Means the agreement in the bill set up to pay him twenty-five thousand dollars for signing said receipt, or any part thereof, or anything whatever; and they deny each and every allegation of the bill in respect thereto; and say that said receipt was not executed or delivered in whole or in part by reason, or in pursuance, of the pretended fraudulent agreement or combination in the bill set up, and that no such combination was ever made and they deny each and every allegation in the bill in respect thereof.

And these defendants say that neither of them had notice or knowledge of the pretended rights, or of any right of the beneficiaries of the trust set up in the bill at the time or before they charged said $136,035.75 against said William Means' said share of said estate under said will, or at the time or before said receipt was as aforesaid delivered to them or said notes and due bills were delivered by them to William Means, or any knowledge whatever of the claim or the existence of a trust in favor of the said wife and children of William Means before the summer of 1891, and they deny each and every allegation in the bill charging such notice or knowledge.

And these defendants aver that said indebtedness was at and from the date of the death of Thomas W. Means an equitable charge and set-off against the share and legacy of William Means under said will and subject to the right of retainer in these respondents against the said share of William Means in said estate unaffected by the decree set out in complainants' bill or the alleged agreement on which the same is based.

And these respondents further answering say, that on the 31st day of October, 1890, said William Means was indebted to Mary A. Adams in the sum of sixteen hundred and fifty dollars ($1,650); and he was also on said date indebted to John Means in the sum of eight thousand four hundred and seventy-eight and thirty-three hundredths dollars ($8,478.33); and was also on that date indebted to Margaret A. Means in the sum of sixteen thousand one hundred and twelve and forty-six hundredths dollars ($16,112.46), and on that said date he (said William Means) delivered to these respondents three assignments and orders in writing signed by him, whereby he assigned to said Mary A. Adams, John Means and

Margaret A. Means, respectively, sufficient of his said one-fifth
34 interest in said estate of Thomas W. Means, deceased, to pay said sums so loaned to him by them respectively, and further thereby ordered these respondents to make a note and memorandum of said assignment and distribute to them respectively said sums due them out of the first money of his coming into the hands of these respondents without further order or receipts from them.

The terms of said orders are set out in that in favor of Mary A. Adams, of which the following is a copy:

"E. C. Means and Thomas M. Adams, executors of Thomas W. Means, dec'd.

GENTLEMEN: I hereby assign to Mary A. Adams sufficient of my interest in the estate of Thomas W. Means, deceased, to pay to her the sum of $1,650 advanced by her to me from time to time, and for which I am indebted to her; and you are further ordered and directed to make a note and memorandum of this assignment.

You are further ordered and directed to pay to said Mary A. Adams without further order or receipt upon my part the sum of one thousand six hundred and fifty dollars ($1,650) as aforesaid, out of the first distributive money of mine coming into your hands, without further order or receipt from me.

You are directed to take her receipt for me for so much money.

(Signed) WILLIAM MEANS.

Ashland, Ky., October 31, 1890."

The orders in favor of John Means and of Margaret A. Means are in terms identical with the order in favor of Mary A. Adams, differing only in amounts and in name of payee.

Said Mary A. Adams, Margaret A. Means and John Means on said date received notice of said assignment and orders for payment of their said claims and accepted same, and respondents accepted same subject to their right as administrators to retain said $136,035.75, and subject thereto, the said John Means, Margaret A. Means and Mary A. Adams claim the right to have said sums paid to them respectively, out of the interest of William Means in said estate so far as the same may prove sufficient therefor. And these respondents further answering, say:

They deny that no settlement has been made of the transactions of John Means for his father, for they say: That by the judgment of the Boyd county court, Kentucky, which court then and
35 there had jurisdiction of said matter, the respondent Thomas M. Adams was appointed and duly qualified as committee of the person and estate of Thomas W. Means on the 3rd day of May, 1890, and thereupon and in the lifetime of Thomas W. Means received from John Means, who held custody thereof, the books, papers and effects of Thomas W. Means in the possession of John Means, which books, by entries regularly made in current transactions of the business of Thomas W. Means by John Means, show all transactions made by John Means; and respondents aver that said committee accepted said accounts, books and papers as truly and cor-

rectly showing all such transactions; that said committee then accepted said surrender and showing as a full, complete and satisfactory accounting of John Means in respect of his transactions in that behalf; that the respondents have no reason to believe and do not in fact believe otherwise than that the said accounting was full, accurate, just and correct in every respect, and aver and charge his said accounting was and is just and true in all respects.

They deny that they are or that either of them is under the dominion or control of said John Means, or that they have been or are colluding with him to hinder, delay or prevent an inquiry into his said transactions at all or with the purpose or effect of defrauding complainants or preventing them from receiving any portion of the estate of Thomas W. Means.

They deny knowledge, information or belief that John Means is indebted to the estate of Thomas Means, or that any further accounting of his said transactions will show him so indebted. They deny that Thomas W. Means for some years prior to his death was an imbecile, or that he was in imbecile condition for more than one year next before his death, or incompetent to transact business except within a year next before his death.

They deny that John Means acted as trustee for Thomas W. Means, self-constituted or otherwise, or otherwise acted for him except as agent and attorney under due appointment of Thomas W. Means as hereinbefore stated; and further deny all and all manner of collusion with John Means charged in said bill with respect to his transactions for Thomas W. Means.

These respondents say they have no knowledge or information that the pretended agreement mentioned in the bill between William Means and members of his family, was ever made except as derived from an inspection of the record and decree in the Green county, Ohio, court of common pleas, mentioned in the bill;
36 but they have reason to believe that such agreement was never made, and therefore deny the same was made.

They are also informed, and believe, and so charge, that the decree in said suit was procured by fraud and collusion for the purpose of hindering, delaying and defrauding the creditors of said William Means, including these defendants as administrators of the estate of Thomas W. Means, with full knowledge on the part of all of the parties to said suit, of the financial condition and insolvency of said William Means, as hereinafter alleged.

And further answering, respondents say: They are informed, believe and charge that at the time and before said pretended agreement for family settlement alleged in the bill was made, if made at all, William Means was hopelessly insolvent, and yet so remains, and was then largely indebted, in addition to his indebtedness due the estate of Thomas W. Means, hereinbefore set out, and that his entire property was and is insufficient to pay the same, all which was then well known to William Means and to all members of his family; that before he incurred said indebtedness, and while in good financial condition, he had made an equitable provision and settlement for his family out of his property by conveyance

and transfer of large amounts of real and personal property to his wife, which she still owns, and then represented and still represents the value of a fair and reasonable equitable settlement and provisions for his said wife out of his estate.

And further answering, these respondents say: That they are informed and believe that at and before the date at which it is alleged that said pretended family agreement and settlement was made, all the family of William Means had knowledge and notice of his said insolvent condition and of his inability to pay any of his indebtedness except out of his share in his father's estate, and that his father was then eighty-seven years of age, and on account of infirmity and weight of age was then incompetent to make or revoke a will, and that by the will of Thomas W. Means theretofore executed when of sound mind, one-fifth of said estate had been given to William Means, and that in due and natural course the said interest would soon become vested in William Means, and be subject in law to his indebtedness; yet for the purpose and with the intent of cheating, hindering and delaying his creditors, his said family induced him to enter into said pretended family settlement, if made at all, to place said expectancy and property in the hands of trustees for the benefit, not only of other members of the family, but
37 for the use and benefit of the said William Means as well, the decree in establishing such trust providing, among other things, that said trust "shall continue during the lifetime of the said William Means unless all of said beneficiaries agree in writing to an earlier termination thereof; and any agreement in this behalf, which they shall so make, shall be respected by said trustees," and these respondents have reason to believe, and so they aver, that the consideration for said agreement, set up in said bill, was nominally, merely, or, if not, was grossly inadequate to the value of William Means' interest in said estate at the date of said agreement, if same was made, and that by reason of the premises said agreement and transfer was fraudulent and void as to creditors of William Means, including the estate of Thomas W. Means.

Wherefore these defendants pray to be hence dismissed with their costs.

JOHN F. HAGER AND
LAWRENCE MAXWELL, JR.,
Attorneys for Defendants Thomas M. Adams and E. C. Means, Administrators.

STATE OF OHIO, *Hamilton County,* } ss:

Thomas M. Adams and E. C. Means, being first duly sworn, say that the averments of their foregoing answer are true, and that where the same are made upon information and belief that they believe them to be true.

THOS. M. ADAMS.
E. C. MEANS.

Sworn to before me, and subscribed in my presence, this 5th day of March, A. D. 1892.

[SEAL.] WM. K. MAXWELL,
Notary Public, Hamilton County, Ohio.

Notary fee paid by E. C. Means.

38 ASHLAND, KENTUCKY, *October 16th*, 1890.

Received of Thomas M. Adams and E. C. Means, administrators, with the will annexed, of the estate of Thomas W. Means, deceased, the sum of one hundred and thirty-six thousand and thirty-five and $\frac{75}{100}$ dollars, being a part of my distributable share as legatee under said will applied by them as ordered by me upon the following notes and claims owed by me to the estate of said decedent, payable to his order, to wit:

Forty-nine thousand nine hundred and ninety-five dollars applied on my note dated 22nd November, 1888, 1 day interest from December 1st, 1888, for $45,000. Fifty-six hundred and eighty-five and $\frac{32}{100}$ dollars, applied on my note of August 20th, 1888, 1 day for $5,041.67.

Six thousand and seventy-five and $\frac{51}{100}$ dollars applied on my note of November 9th, 1888, 1 day for $75,000.

Eight thousand three hundred and one and $\frac{56}{100}$ dollars applied on my note of September 25th, 1888, 1 day for $7,400.

Eighteen hundred and three and $\frac{33}{100}$ dollars applied on my note of November 17th, 1888, 1 day for $1,620.

Twenty-three hundred and forty-five and $\frac{70}{100}$ dollars applied on my note of October 24th, 1888, 1 day for $2,100.

Five hundred and fifty-four and $\frac{4}{100}$ dollars applied on my note of November 9th, 1888, 1 day for $497.13.

Six thousand five hundred and eighty-three and $\frac{64}{100}$ dollars applied on my note March 19th, 1888, 1 day for $15,027.00.

Fifty-one thousand six hundred and seventy-seven and $\frac{90}{100}$ dollars applied on my due bill of February 15th, 1888, for $125,911.74 *dollars.*

Three thousand and thirteen and $\frac{76}{100}$ dollars applied on my note of December 3rd, 1888, for $2,713.88.

This receipt is given in pursuance of settlement made October 6th, 1890.

WILLIAM MEANS.

Attest:
JOHN F. HAGER.
A. E. LAMPTON.

39 Endorsed: No. 1774. U. S. circuit court, district of Kentucky. Cowen *et al.*, trustees, *vs.* Adams and Means, adm'rs. Joint answer of Thomas M. Adams and E. C. Means, adm'rs, with will annexed, of Thos. W. Means, dec'd Filed March 7th, 1892. Jos. C. Finnell, clerk, by F. D. Cochran, D. C. John F. Hager, Lawrence Maxwell, Jr., counsel for Adams and Means, adm'rs, defendants.

United States Circuit Court, District of Kentucky.

B. R. COWEN, EVAN F. WILLIAMS, and A. S. FRAZER, Trustees,
vs.
THOMAS M. ADAMS, E. C. MEANS, Administrators, etc., and JOHN MEANS.

Replication.

The replication of B. R. Cowen, Evan F. Williams, and A. S. Frazer, complainants, to the answer of Thomas M. Adams, E. C. Means, administrators, etc., and John Means, defendants.

These repliants saving and reserving unto themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replications thereunto, say that they will aver, maintain and prove their said bill of complaint to be true, certain and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue and insufficient to be replied to by these replicants. Without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver, maintain and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

B. R. COWEN.
J. J. GLIDDEN,
JOHN LITTLE, AND
H. P. WHITAKER,
Solicitors for Complainants.

40 Endorsed: No. 1774. U. S. circuit court, district of Kentucky. B. R. Cowen, Evan F. Williams, and A. S. Frazer, trustees, etc., *vs.* Thomas M. Adams, E. C. Means, administrators, etc., and John Means. Replication. Filed April 4, 1892. Jos. C. Finnell, clerk, by F. D. Cochran, D. C. J. J. Glidden, H. P. Whitaker, and John Little.

United States Circuit Court, District of Kentucky.

BENJAMIN R. COWEN *et al.*, Trustees, etc., Complainants,
vs.
JOHN MEANS *et al.*, Respondents. } No. 1774.

Amended Bill.

Now come complainants and by leave of court amend their bill filed herein, and for amendment say they do not admit that said sum of one hundred and thirty-six thousand dollars was paid by

Thomas W. Means to William Means as an advancement or otherwise, and aver that they have no knowledge of said sum or any portion thereof having been paid to or on account of or advanced to William Means by Thomas W. Means except as claimed by respondents, and therefore they aver that no part thereof was so paid or advanced by said Thomas W. Means. But complainants aver that if any amounts were advanced in any manner to William Means by Thomas W. Means in his lifetime, they were all granted by Thomas W. Means as and became and are under the provisions of his will advancements and cannot be charged against the distributive share in said estate coming to these complainants, trustees. And if any amounts were paid to or on account of William Means or loaned or advanced to him by Thomas W. Means, they aver that the amount thereof is much less than the sum of $136,000, and demand strict proof of the amount and each item.

THE UNITED STATES OF AMERICA, }
Southern District of Ohio. }

Benjamin R. Cowen, being duly sworn, deposes and says
41 as follows, to wit: I am one of the complainants in the above-entitled cause. I have read the foregoing amendment to the bill of complaint heretofore filed and know the contents thereof. I know of my own knowledge that all the matters and things stated concerning the acts of the complainants are true, and as to all other matters and things I verily believe them to be true.

B. R. COWEN.

Sworn to before me and subscribed in my presence by the said B. R. Cowen, at Cincinnati, O., this 10th day of February, A. D. 1893.

[SEAL.] ROBT C. GEORGI,
Deputy Clerk U. S. Circuit Court, S. D. O.

Endorsed: No. 1774. United States circuit court, district of Kentucky. Benjamin R. Cowen *et al.*, trustees, etc., *vs.* John Means *et al.* Filed Feb. 10, 1893. Jos. C. Finnell, clerk, by F. D. Cochran, D. C. Filed Oct. 4, 1895. Frank O. Loveland, clerk. Allowed Feb. 10, '93. Howell E. Jackson, circuit judge.

United States Circuit Court, District of Kentucky.

BENJAMIN R. COWEN, EVAN F. WILLIAMS, and A. S. FRAZER, Trustees of an Express Trust, Complainants,
vs.
JOHN MEANS and E. C. MEANS and THOMAS M. ADAMS, Executors of the Estate of Thomas W. Means, Respondents. } No. 1774.

Supplemental Bill.

The complainants by way of supplemental bill respectfully represent that since the filing of their original bill herein, the respond-

ents, E. C. Means and Thomas M. Adams, administrators, with the will annexed, have advertised for sale at public auction at the Ashland National Bank building, Ashland, Boyd county, Kentucky, on the 15th day of March, 1893, the following securities belonging to the estate of Thomas W. Means, to wit: One hundred and
42 seventy-five shares, one thousand dollars each of the capital stock of the Means, Russell & Means Iron Company, a corporation, incorporated under the laws of Kentucky; two hundred and ten shares of one thousand dollars each of the capital stock of the Means, Kyle & Company, a corporation, incorporated under the laws of the State of Ohio; seventy shares of fifty dollars each of the stock of the Portsmouth, Ohio, Gaslight Company, twelve shares of one thousand dollars each of the Norton iron works of Ashland, Kentucky. That all of the above-mentioned stocks except the thirty-five hundred dollars of Portsmouth Gaslight Company stock are stocks of companies engaged in the iron business and their salable value is controlled by the condition of the iron business; that the terms of said sale are cash or upon credit of three months with bond and approved security; that the indebtedness of said estate has long since been fully paid and there has been distributed to each of the distributees of said estate, except your complainants, the sum of sixty-seven thousand dollars to each one; that no amount whatever has been distributed to complainants. The respondents wrongfully assert as set forth in the original petition filed herein, a distribution which they claim to have made to William Means, evidenced by receipt for one hundred and thirty-six thousand dollars as set forth in the original bill of complainants, to which reference is hereby had; that in the distributions heretofore made by the said administrators they have distributed in kind the stocks to the various distributees by crediting themselves with the stock as sold to the distributees at the agreed price charging the distributees with having received that much money and delivering to them the stock. That as shown by the testimony of John Means, respondent, taken in this case, the respondents herein and the other heirs of Thomas W. Means and distributees of his estate, other than your complainants, are amply able to protect themselves and each of them from loss or sacrifice from a forced sale of said securities. Your complainants have protested in writing to said administrators against said sale and have asked that a distribution in kind be made of said securities to the end that a sacrifice be avoided and that the interest claimed by these respondents be held by the administrators until the final determination of this action; that said administrators have refused to accede to the request of complainants and are proposing unless restrained by the order of this court, to proceed with said sale. And your complainants upon information and belief charge that the said administra-
43 tors in making said sale are acting in collusion with John Means, the father of one of the administrators and uncle of the other and the other distributees of said estate, other than complainants, with the purpose and intent that they may procure said securities to be bid in at such low valuation as in the depressed

condition of the iron business and a forced sale upon the terms proposed they may obtain to the end and with the view that thereby the interest of your orators, if they recover in this cause, will be greatly reduced and to their benefit. Your orators further say that the iron business at present is in such depressed condition that a sale of said securities in such amounts at this time cannot be made at public auction without a great sacrifice; that there is not probably any person nor persons in Ashland, Kentucky, other than the respondents and their codistributees, who could or would purchase said securities at such forced sale. Your orators further aver upon information that negotiations are now pending for a sale of the Means & Russell Iron Company property to a syndicate at the price of ninety cents upon the dollar of the stock and that it is anticipated with at least reasonable probability that such sale can be and may be within the near future consummated by the distributees after becoming purchasers of said stock; that the stock of the Means & Russell Iron Company was appraised at eighty cents upon the dollar in the inventory of said estate making the appraised value thereof one hundred and forty thousand dollars; that the stock of the Means, Kyle & Company was appraised in said inventory at par making the value thereof two hundred and ten thousand dollars; that unless said sale is restrained by order of this court there is nothing to prevent, as complainants believe and aver, the sacrifice of complainants' interest in this large sum. That the respondents as such administrators are trustees of an express trust of which trust your complainants and the other distributees of said estate are the beneficiaries; that by virtue of the original bill and the proceedings had thereunder this honorable court has taken jurisdiction of the administration of said trust so far as your orators are concerned.

Wherefore your orators pray that this court by its order restrain said administrators from disposing of the one-fifth interest in said securities owned and claimed by your orators as per original bill filed herein, and order that the same may be held to await the result of the adjudication of this court in this cause and for such other and further relief *and* they are entitled to in the premises.

J. J. GLIDDEN &
H. P. WHITTAKER,
Solicitors for Complainants.

44 UNITED STATES OF AMERICA, }
Southern District of Ohio. }

Before me, the subscriber, duly authorized to administer oaths, personally came B. R. Cowen one of the said complainants named who being duly sworn, deposes and says that so far as the statements in the foregoing supplemental bill contained are within his own knowledge, they are true, and so far as they are derived from the information of others, he verily believes them to be true.

B. R. COWEN.

Sworn to and subscribed before me this 13th day of March, 1893.

[SEAL.] ROB'T C. GEORGI,
Deputy Clerk U. S. Cir. Court, S. D. O.

Endorsed: No. 1774. United States circuit court, district of Kentucky. Benjamin R. Cowen, Evan F. Williams, and A. S. Frazer, trustees of an express trust, *vs.* John Means and E. C. Means and Thomas M. Adams, executors of the estate of Thomas W. Means. File W. H. T. Entered and filed M'ch 14th, 1893. Jos. C. Finnell, clerk, by F. D. Cochran, D. C. J. J. Glidden, H. P. Whitaker, solicitors for complainants.

United States Circuit Court, District of Kentucky.

COWEN *et al.*, Trustees,
vs.
ADAMS and MEANS, Administrators of John Means.

Memorandum for Order.

This is an action by the assignees of William Means to recover one-fifth of the estate of Thomas Means, devised to William Means by the will of Thomas Means, from the administrators with the will annexed of Thomas Means, and to set aside an alleged settlement between William Means and the executors of Thomas Means by which William Means was charged on his distributive share with the payment of $126,000, on the ground that this settlement was made after the rights of complainants as assignees had
45 accrued and with the knowledge of their rights; and on the further ground that the amount of indebtedness thus stated against William Means was not an indebtedness but an advancement to him out of his father's estate, which, by the express terms of the will, was not to be charged against his distributive share. The bill further charges collusion between John Means, another of the distributees and devisees under the will, with the administrators, whereby the latter have not enforced against John Means the obligations owing by him to the estate and have not properly stated the account between them and John Means.

A supplemental bill is now offered for filing, charging that a public sale is to take place on the 15th of this month of $175,000 par value of the capital stock of the Means and Russell Iron Company, being $\frac{7}{8}$ of the entire capital stock of that company, $210,000 par value of the capital stock of Means, Kyle and Company, a corporation of the State of Ohio, being $\frac{21}{50}$ of the entire capital stock; $3,500 of the capital stock of the Portsmouth Gas Light Company, and $12,000 of the capital stock of the Norton iron works of Ashland, Ky., all assets of the estate of Thomas Means.

Thomas Means died in June, 1890, leaving a will in which he vested in his executors or their successors power to sell any or all of his personal estate at public or private sale. The debts of the estate have been settled and there remains nothing now but the

distribution of the property, and this proposed sale is to reduce the assets to cash for distribution. The supplemental bill charges that this sale is for the fraudulent and collusive purpose of enabling John Means, or the devisees other than the complainants, to buy the stock in at an inadequate price, and thereby possess themselves of the assets of the estate, leaving for distribution to the complainants a very small part of the real value of the stock. The allegation is that most of the stock mentioned is iron property which is now very hard to dispose of in the market in view of the condition of the iron business; that it is making a forced sale of the assets of the estate when there is no necessity therefore, with the purpose aforesaid.

I think this supplemental bill is germane to the original bill in that it sets forth only another step in the alleged fraud and collusion between John Means and the administrators, prejudicial to the interests of the complainants. Whether they are entitled to have the settlement of William Means set aside or not, they are admittedly interested in the amount which the entire estate will bring,
46 in order that there may be a balance left to them over and above the $126,000 now charged against William Means. The public sale of stock in companies like those of the Means and Russell Company and Means, Kyle and Company, which are really private business enterprises and the stock of which has no market value whatever, would give ample opportunity for the fraud charged. The complainants are helpless because they have no means with which to save their interests, whereas the respondent John Means and the other devisees, with their large interest in the estate, might easily use their interest as devisees in the stock to prevent a sacrifice of their interests by buying it in and using their distributive shares to pay for the same.

It is true that the discretion of the administrators under the will is absolute; but if that discretion is to be used for collusive purposes, the court has the right to restrict its exercise. It may be that there is some reason why these shares of stock should be sold at once. It would seem better to negotiate them at private sale, particularly the stock in Means, Kyle and Company, which is not the controlling interest in the corporation. But there may be some reason why it should be done and why the discretion of the administrators should be exercised in carrying out the sale. Nevertheless, in view of the allegations of the supplemental bill, I shall make an order against the administrators, staying the sale for two weeks from the 15th of March, and order them to announce the postponement of the sale to that date. In the meantime, on Wednesday the 22nd of March, I will hear evidence submitted on affidavits or oral evidence as the parties wish, upon the charges made in the supplemental bill, and upon the reasons which have induced the administrators to make the sale. The complainants only ask that one-fifth of the stock proposed to be sold be held for them and not sold, but I assume that if one fifth is to be withheld from sale, it would be much better for the interest of all parties that the whole sale be postponed. For that reason, the order will be that the sale be post-

poned for two weeks from the 15th of March, the 29th of March, 1893. I shall not require a bond, because it seems to me that the delay in the public sale for two weeks cannot work any injury of any kind. Were the administrators engaged in negotiations for a private sale, it might interfere, perhaps, with the completion of the sale to have it delayed two weeks; but where the auction is to be public, I assume that no private arrangements have been made with any outside purchaser or bidder, and that the delay cannot work any substantial injury.

47 The clerk will make an order as above against the administrators, and the supplemental hearing on the same issue will be fixed for the 22nd of March.

Endorsed: No. 1774. B. R. Cowen *et al. vs.* Thos. M. Adams *et al.* Memo. for order. Ent. and filed March 14, 1893. Jos. C. Finnell, clerk, by F. D. Cochran, D. C. Filed Oct. 4, 1895. Frank O. Loveland, clerk.

STATE OF KENTUCKY, }
Boyd County Court, Ky. }

Will of Thomas W. Means.

I, Thomas W. Means, of Lawrence county, and State of Ohio, being of sound mind and disposing memory, do hereby make and publish this my last will and testament, hereby revoking all former wills and codicils by me made.

Item 1. I hereby nominate and appoint my sons, John Means and William Means, and my friend Eugene B. Williard, as executors of this my will.

Item 2. I direct that all my just debts, including funeral expenses, and the expense of administration, be paid by my executors.

Item 3. I hereby will and direct that no sale be made of my household goods and furniture, books, paintings, pictures, horses, cows, carriages, buggies, tools and implements of every kind and utensils, and hay, corn, feed, &c., on the premises where I reside, *reside*, but that the same be divided in kind, by those of my hereinafter-named four children, now living, who shall survive me, among themselves as they deem proper and equal.

Item 4. I give, devise and bequeath all the residue and remainder of my estate, personal, real and mixed wherever situated or located of which I shall die possessed, to be equally divided among my four children, John Means, William Means, Mary A. Adams and Margaret A. Means, and my grandson, Thomas M. Culbertson (son and sole heir of my deceased daughter Sarah Jane Culbertson) who shall be living at the time of my decease, and the issue of my child, now living, and of said grandson who may then have deceased, such issue taking the share to which such child or grandson, would be entitled if living. But said share given, devised and bequeathed to said grandson or his issue is to be held in trust as hereinafter

48 provided, and to be subject to the provisions hereinafter contained as to said grandson's shares.

Item 5. I have made advances to my said children which are charged to them respectively on my books, and I may make further advances to them respectively, or to some of them, and to my said grandson, which may be charged on my books to their respective accounts. I desire the equal provision herein made for said children, and the provision for said grandson, to be a provision for them respectively, in addition to said advances made, and that may hereafter be made and that in the division, distribution and settlement of my said estate said advances made, and that may hereafter be made, be treated not as advancements but as gifts not in any manner to be accounted for by my said children and grandson or any of them, or the issue of any of them.

Item 6. I hereby give, devise and bequeath, the share hereinbefore provided for my said grandson, Thomas M. Culbertson, to said John Means and William Means and Eugene B. Williard, the survivors or survivor of them absolutely, and in fee, in trust always and only however, for the following uses and purposes; that they have full power to act in the division and distribution, and settlement of my said estate as to said share, the same as if it were herein devised and bequeathed to them, the survivor or survivors of them absolutely and in fee for their own use and benefit, and that they, the survivor or survivors of them have, hold and manage the same, collect the same, and the income thereof, with full discretionary power of disposal, sale and reinvestment of the whole or any part thereof, and to execute deeds and all other proper instruments, necessary and proper for carrying into execution this trust, till my said grandson shall have arrived at twenty-six years of age, when his said share, its proceeds and income in the hands of said trustees, the survivor or survivors of them shall be turned over to him, said grandson, absolutely and in fee. But if at the time he would have arrived at twenty-six years of age said grandson shall have deceased leaving legitimate issue that shall then be living, his said share shall then be turned over absolutely and in fee to such issue. But if at that time or at any time prior thereto, it shall turn out, that said grandson, shall have deceased, and no legitimate issue of his shall then be living, said trustees, the survivor or survivors of them, shall at once turn over his said grandson's share, its proceeds and income in their hands to my said four children—now living who shall then be living, and the issue of any child
49 who may then have deceased to be divided equal*by* among said four children if all living, and such issue of any deceased child taking the share to which such deceased child would be entitled if living. I hereby will and direct the said trustees, the survivor or survivors of them, who accept this trust, shall pay out of the net income of said grandson's share, the expenses of supporting, maintaining and educating him in such manner as they may deem suitable and proper, until he shall arrive at twenty-six years of age. Should any of said-named trustees decline to accept this trust, I will and direct that it be executed by those of them that do accept the same, but should they all decline to accept or all die, or all who have accepted become unable at any time to act, then I

direct and request the proper court to appoint in their stead a suitable trustee who shall be nominated by the survivors of my said children, and when appointed be vested with the same powers, rights, duties, discretions and responsibilities as said-named trustees would be vested with should they accept.

Item 7. I hereby authorize and empower my executors of this will to compromise, adjust, release and discharge in such manner as they deem proper the debts and claims due me, and to settle my accounts and affairs, and I also authorize and empower my executors, if they deem it best for my estate to sell by private sale, or in such manner, upon such terms of credit or otherwise as they deem proper, all or any part of the personal property of my estate, other than that mentioned, and bequeathed in item 3 of this will and deliver the same and give receipts for any money paid or accounted for to my estate by purchasers or others who shall be exonerated by such receipts from all liabilities in respect to the application, of the money. But I also hereby authorize and empower my executors, if they deem it best for my estate to divide and distribute in kind the whole or any part of the notes, bonds, accounts, claims, &c., belonging to my estate, to any or all of the legatees of this will, according to their respective shares, including my said sons, John Means and William Means, whom I have named as executors, at such a valuation as my executors deem just and equitable, and I will and direct that no final settlement of my personal estate can in any event be required before three years after my decease, and I declare that as well each and all of said-named executors, as any and all trustees under this will, shall be charged only to the extent of his or their respective and actual receipts, and be exempt from responsibility for involuntary losses and be entitled to retain all disbursements and expenses incident to the execution of my will and of any trust therein.

Item 8. If from failure of any of said-named executors to accept, or from death or disability to act, or from any cause, the number of executors shall at any time become less than two, I hereby direct and request the proper court on the nomination of the survivors or survivor of my said children to appoint a sufficient number of executors, so that the number of acting executors shall not be less than two, and said appointed executor or executors shall have all the power, authority, rights, responsibilities and liabilities as said-named executors would have if acting, and if only one of said-named executors should fail to accept or die, or fail from any cause to act, then this will shall be executed by the remaining two, and generally this will shall be executed — any remaining two executors acting executors whether they are said-named executors or are appointed by the court as above provided.

Item 9. I declare that this writing consisting of two sheets of paper, contains the whole of my will which is written on six pages and attested and signed and witnessed on the seventh page.

In testimony hereof I have hereunto set my hand and seal this 20th day of July, in the year 1880.

THOMAS W. MEANS. [SEAL.]

Signed and acknowledged by said Thomas W. Means as his last will and testament in our presence and signed by us in his presence at his request and in his sight and in the presence of each other as subscribing and attesting witnesses.

HALSEY C. BURR.
JULIUS L. ANDERSON.

STATE OF KENTUCKY, } *sct:*
Boyd County, }

I, J. H. Poage, clerk of the county court, within the State and for the county aforesaid, do certify that the foregoing instrument of writing purporting to be the last will and testament of Thomas W. Means, deceased, was on the 28th day of July, 1890, produced and filed in the Boyd county court and duly proven by the oaths of Halsey C. Burr and Julius L. Anderson, sub-
51 scribing witnesses thereto, to be and the same was allowed and established as the last will and testament of Thomas W. Means, deceased, and admitted to record as such.

Whereupon said will and this certificate hath this day been duly recorded in my office.

Given under my hand this 31st day of July, 1890.

J. H. POAGE, *Clerk,*
By W. O. HAMPTON, *D. C.*

STATE OF KENTUCKY, } *sct:*
County of Boyd, }

I, G. F. Friel, clerk Boyd county court, Kentucky, do hereby certify that the foregoing is a true and correct copy of the will of Thomas W. Means, deceased, as appears on the record of wills in and for the county and State aforesaid.

Given under my hand and official seal this 10th day of
[SEAL.] November, in the year of our Lord one thousand eight hundred and ninety-one.

J. G. FRIEL, *Clerk,*
By JAS. F. PENNYBACKER, *D. C.*

Endorsed: To copy of will of Thos. W. Means, deceased. Filed Aug. 7. 1893. Joe C. Finnell, clerk. Filed Oct. 4, 1895. Frank O. Loveland, clerk. Recorded in Will Book No. 2, page 55. Tax and fees $3.00.

United States Circuit Court, District of Kentucky.

BENJAMIN R. COWEN, EVAN F. WILLIAMS, and A. S. FRAZIER, Trustees, etc., Complainants,
vs.
THOMAS M. ADAMS and E. C. MEANS, Administrators, with the Will Annexed, of Thomas W. Means, Deceased, etc., Defendants.

Amendment of Answer.

Amendment of the answer of the defendants, T. M. Adams and E. C. Means, administrators, with will annexed, of Thomas W. Means, Deceased.

52 The defendants, Thomas M. Adams and E. C. Means, administrators, with the will annexed of Thomas W. Means, deceased, by way of amendment of their answer and amendment thereto, say that heretofore and since complainants exhibited their present bill in this honorable court, to wit: on the — day of December, 1893, the Metropolitan National Bank, of Cincinnati, Ohio, a national banking corporation organized and existing under the laws of the United States of America, did exhibit its bill of complaint in this honorable court against these defendants, as administrators with the will annexed of Thomas W. Means, deceased, and against John Means, Margaret A. Means, Mary A. Adams, and William Means, alleging and claiming therein that it is a judgment creditor of William Means in several amounts aggregating $51,410.21, upon which judgments a return of *nulla bona* is also alleged, and that the said judgments remain and are unsatisfied; thereupon praying that these defendants, as administrators aforesaid, John Means, Margaret A. Means, Mary A. Adams and William Means be made parties to the said bill; that it be decreed to the said complainant that it has the right to subject the interest of William Means in the estate of Thomas W. Means to the payment of the said indebtedness to the complainant, and as superior to the claims of the defendants as administrators aforesaid to the interest of William Means in satisfaction of the indebtedness evidenced by the receipt of October 16th, 1890, and the notes to which the same refers, and that it may be decreed that these defendants, as administrators, aforesaid, pay over to said complainant so much of the interest of said William Means in the estate of Thomas W. Means as may be sufficient to satisfy said judgments, and that the court may therein set aside and hold for naught against the said complainant the said receipt; that an accounting be had, and that these defendants, as administrators aforesaid, be decreed to pay so much thereof as would be the distributive share of the said William Means in the estate of his father, and as may be necessary and sufficient to satisfy said judgments; to which said bill these defendants put in their joint and several answer, and the said bill is still pending in this court, and the matters thereof undetermined.

Second. And these defendants, for further amendment of their

answer herein, say that on the 4th day of January, 1893, the said The Metropolitan National Bank, of Cincinnati, O., instituted action in the Boyd circuit court, in the State of Kentucky, against
53 these defendants as the administrators with the will annexed of the estate of Thomas W. Means, deceased, and against John Means, Margaret A. Means, Mary A. Adams, Thomas M. Culbertson, a son of Sarah J. Culbertson, a deceased daughter of Thomas W. Means, against Robert Peebles, trustee, appointed under the will of Thomas W. Means of and for said Thomas M. Culbertson, Evan F. Williams, Charles W. Baker, The Ashland National Bank of Ashland, Kentucky, and complainants herein, Benjamin R. Cowen, A. S. Frazier and Evan F. Williams, trustees, and Martha E. C. Means, wife of William Means, Gertrude E. Means, Pearl Means and Patti Means, as defendants, therein alleging indebtedness of William Means to it upon several notes aggregating, with interest, the sum of $51,410.20, after that date reduced to judgment in the superior court of Cincinnati, Ohio, and set up in the bill of complaint referred to in first paragraph of this pleading, and praying for relief by judgment upon the said alleged indebtedness of William Means to it, and for an order of attachment attaching in the hands of these defendants, as administrators with the will annexed of the estate of Thomas W. Means, so much of the distributive share of William Means of one-fifth in said estate as would pay the claim of the plaintiff therein, and that, pending the said action, these defendants be enjoined from paying over to the said William Means, or to John Means, Margaret A. Means, Mary A. Adams, Thomas M. Culbertson, or to his trustee, to Benjamin R. Cowen, A. S. Frazier, or Evan F. Williams, trustees, complainants in this action, Martha E. C. Means, wife of William Means, Gertrude E. Means, Pearl E. Means, Patti W. Means, The Ashland National Bank of Ashland, Kentucky, Evan F. Williams, Charles W. Baker, or either of them, any part of the distributive share of William Means in the estate of his father, or any part of the interest of William Means held by these defendants as administrators aforesaid, as payment by William Means on account of notes executed by him to Thomas W. Means, or any part of said interest upon assignments thereof claimed by John Means, Mary A. Adams and Margaret A. Means; and that the said interest of William Means, or so much thereof as might be sufficient and necessary to satisfy the judgment in that action, might be applied to the satisfaction of the same, and that thereupon orders of attachment issued from the said Boyd circuit court, Kentucky, and were served upon these defendants, and the said action is yet pending, and the said orders of attachment so issued and served upon these defendants
54 are still in effect; and in their said action, upon the motion of the said plaintiff, The Metropolitan National Bank, the said Boyd circuit court issued on the 12th day of February, 1893, an order thereupon served upon these defendants, restraining them, and each, from paying out any funds in the hands of either as administrator with the will annexed of the estate of Thomas W. Means, deceased, in which William Means has any interest, and

commanding them, and each, to hold such funds subject to further order of the said court, which said order is still in force, and other matters at issue in the said action are still pending and undetermined.

Third. And these defendants in further amendment of their answer, say that the Ashland National bank, a national banking corporation organized and existing under the laws of the United States of America, at Ashland, Kentucky, on the — day of January, 1892, instituted action in the Boyd circuit court, Kentucky upon judgment and return of *nulla bona* thereon against William Means for the sum of $1,200, with interest from the 9th day of March, 1888, and for costs expended in recovering judgment, joining with William Means, as defendants therein, these defendants as administrators with the will annexed of Thomas W. Means, deceased, Evan F. Williams, Benjamin R. Cowen, and A. S. Frazier, complainants in this action, in and by which action it is sought by the said plaintiff, The Ashland National Bank, to subject to the satisfaction of its debt, interest and cost aforesaid, so much of the one-fifth interest of William Means in the estate of Thomas W. Means as will prove sufficient therefor, and to charge these defendants as garnishees in the said action in respect of the interest of William Means in the said estate, and that these defendants, in obedience to the process of said court, filed answer therein, and said court has taken and yet retains jurisdiction of the said matter, and of these defendants, and that the matters of said action are pending and undetermined.

And these defendants say that of the pendency of the actions and suits mentioned in paragraphs one, two, three, hereof, their nature and objects, the complainants herein had knowledge soon after the filing of each.

Wherefore, these defendants humbly pray that in the event it should be decreed by this honorable court that the complainants herein are entitled to recover against these defendants as administrators any sum or amount as part of the distributive share of William Means, that such further order and decree be thereupon entered as shall protect these defendants, as the administrators aforesaid, against the claim so asserted to the said distributive interest of William Means by the said The Metropolitan National bank in its bill of complaint aforesaid, in its action in the Boyd circuit court, and the said action of the Ashland National bank, also pending in the Boyd circuit court; and that such payment, if any, as they shall be directed to make in any manner for the benefit of said complainants be by the order and protection and under the sanction and direction of this honorable court to the defendants as administrators aforesaid.

55

LAWRENCE MAXWELL, JR.,
J. L. ANDERSON,
JOHN F. HAGER,
Solicitors for Defendants.

UNITED STATES OF AMERICA,
District of Kentucky.

Thomas M. Adams and E. C. Means, defendants in the above cause, being duly sworn, do say that, having read the foregoing amendment of their answer, the matters and things therein contained are true, and that the same is not interposed for the purpose of delay.

THOMAS M. ADAMS.
E. C. MEANS.

Subscribed and sworn to before me this 24th day of September, 1894.

[SEAL.]

ANNA SHINN,
Notary Public, Boyd Co., Kentucky.

Endorsed: 1774. U.S. circuit court, district of Kentucky. Cowen, &c., trustees, *v.* Means and Adams, administrators. Amendment of answer of defendants, administrators of F. W. Means. Tendered to be filed Sept. 26, 1894. J. W. B. Filed October 4, 1895. Frank O. Loveland, clerk.

56 U. S. Circuit Court, Dist. of Kentucky.

B. R. COWEN *et al.*
vs.
T. M. ADAMS *et al.*

It is agreed that complainants have further time until and inclusive of January 15, 1894, within which to complete taking of their evidence before B. Perrin, special commissioner.

The defendants produced amendment of their answer to the bill, the amendments thereof and the supplemental bill of complainants which is ordered to be filed. And, by consent, it is ordered that complainants' replication shall stand as replication to the matters contained in said amendment.

Endorsed: U. S. circuit court, dist. of Ky. Cowen *et al. vs.* Adams *et al.* Filed Dec. 6, 1893. Jos. C. Finnell, clerk. Agreed to. L. Maxwell, Jr., Jno. F. Hager, for def'ts. J. J. Glidden and H. P. Whitaker for pl't'ffs. Filed October 4, 1895. Frank O. Loveland, clerk.

U. S. Circuit Court, District of Kentucky.

COWEN *et al.*
vs.
MEANS *et al.* } 1774.

The plaintiffs moved to strike from the files the amendment of the answer filed December 6, 1893, which motion after argument by counsel and consideration by the court is overruled. The plaintiffs thereupon moved the court to compel the defendants to advance or secure the money to cover the plaintiffs' costs, or so much thereof

as might be necessary to enable them to pay for and obtain for filing the report of B. Perrin, special examiner, which motion after argument and consideration is overruled.

Endorsed: 1774. B. R. Cowen *et als. vs.* T. M. Adams *et als.* Entries. Entered and filed May 2, 1894. Jos. C. Finnell, clerk, by F. D. Cochran, D. C. Filed October 4, 1895. Frank O. Loveland, clerk.

57 COWEN, WILLIAMS, & FRAZER, Trustees, Complainants,
vs.
ADAMS and MEANS, Administrators, with the Will Annexed, of Thos. W. Means and John Means, Defendants. } Opinion.

Thomas W. Means died in this State on the 8th day of June, 1890, testate, leaving a large estate consisting chiefly of personal property, and in his will dated July 20th, 1890, he, after directing that his household effects should be equally divided in kind between his four children, devised the residue of his estate of every kind and wheresoever situated, to be equally divided between his four children, John Means, William Means, Mary A. Adams and Margaret A. Means, and his grandson, Thomas M. Culbertson, son and sole heir of his deceased daughter, Sarah Jane Culbertson, and in the next (5th) clause of his will, he provides thus:

"I have made advances to my said children, which are charged to them respectively on my books, and I may make further advances to them respectively, or to some of them, and to my said grandson, which may be charged on my books to their respective accounts; I desire the equal provision herein made for said children and the provision for said grandson, to be a provision for them respectively, in addition to said advances made, and that in the division, distribution and settlement of my said estate, said advances made, and that may hereafter be made, be treated not as advancements, but as gifts, not in any manner to be accounted for by my said children and grandson, or any of them, or the issue of any of them."

The executors appointed by said will did not qualify, and the defendants, Thomas M. Adams and E. C. Means, were appointed and qualified as administrators with the will annexed. The complainants, Benj. R. Cowen, Evan F. Williams and A. B. Frazer, are trustees of a trust declared by the common pleas court of Greene county, in the State of Ohio, for the benefit of William Means, his wife and children, and they claim, as said trustees under said decree and under the subsequent assignment of William Means, made
58 December 26th, 1891, to hold the one-fifth interest of said William Means in his father's estate.

This suit is, as we read the pleadings, for the purpose of having the complainants' right as trustees of an express trust, to have and receive whatever interest William Means is entitled in and to the

estate of his father, Thos. W. Means, deceased, recognized by the administrators; and to have the settlement or agreement made on the 16th day of October, 1890, in which William Means admitted his indebtedness to his father's estate to the extent of $136,035.75, and receipted to said administrators for that amount of his share of said estate and received his notes, etc., evidencing his indebtedness, set aside and declared invalid. And to have the said 5th clause of said will construed and said notes of said William Means to Thos. W. Means declared to be gifts and not debts under said clause.

This suit is for the further purpose of compelling John Means, who acted as the agent and attorney-in-fact for his father in his lifetime to settle his accounts while thus acting. It is alleged that the decedent was an imbecile for some years before his death, and that John Means assumed and did control his estate and business during the period of his imbecility, and that he has never given a correct and true account of his acts or made a settlement thereof, and that upon settlement he is indebted to the estate of his father, and that the administrators, knowing same, refuse to investigate and enquire into the matter, or to require said John Means to settle his accounts, and, "on the contrary, they have been and are colluding with him to hinder, delay and prevent an enquiry into said transactions and a true disclosure of his indebtedness to said estate, with the purpose and effect of defrauding your orators and preventing them from recovering their proper proportion of said estate." And they ask that said Means be compelled to render proper accounts of his acts and make settlement thereof.

The bill alleges that the defendants, Adams and Means, administrators of Thos. W. Means, had theretofore distributed to each of the other four distributees a sum in excess of $44,000, and prays the court to award them relief "by ordering a decree that the said Thomas M. Adams and E. C. Means pay over to your orators the full one-fifth interest of the estate of the said Thomas W. Means, and that they now pay over and pay into this court for the use of your orators the sum equal to the amount that has heretofore been distributed to each of the said other four devisees of said estate, to wit, a sum
59 in excess of forty-four thousand ($44,000) dollars for the purposes of said trust; and that this court also set aside and hold for naught the said pretended receipt, and order that the same be delivered up for cancellation; and that this court order an account to be made by the said John Means of the administration by him of his said self-assumed trust in the management and control of the estate of the said Thomas W. Means, during the time of the imbecility and incompetency of the said Thomas W. Means to transact business. And that the court direct and decree the payment of the one-fifth of the amount found upon said accounting to be still due from the said John Means to said estate to your orators and for all other and further relief to which your orators may, in the premises, be entitled in equity."

The complainants' bill and prayer ask for a final settlement of the estate of Thomas W. Means, deceased, but we are of the opinion such a settlement should not be had without further pleading

because the other devisees under the will of Thomas W. Means should be before the court, if they can be without depriving this court of jurisdiction, and because further the will itself provides that no final settlement of the decedent's personal estate can be required until three years after his death.

The provision of the will in regard to a final settlement should not be disregarded unless those interested consent to an earlier settlement, or the conditions of the estate or other circumstances endanger the interests of the devisees, or some one of them.

The 47th equity rule recognizes the right of litigants in Federal courts to omit bringing before the court proper or even necessary parties that would deprive the court of jurisdiction, or that are out of the jurisdiction of the court, or incapable otherwise of being made parties, but in such cases the decree will be without prejudice to the rights of the absent parties. And in the case of Payne *vs.* Hook, reported in the 7th Wal., 425, and 14th Wal., 252, the Supreme Court recognized the right to bring a suit like this one without joining other distributees. In that case the court in its opinion say, "It is undoubtedly true that all parties materially interested in the subject-matter of the suit, should be made parties to it; but this rule, like all general rules, being founded in convenience, will yield whenever it is necessary that it should yield in order to accomplish the ends of justice. It will yield if the court is able to proceed to a decree, and do justice to the parties before it, without injury to absent persons, equally interested in the litigation, but who cannot conveniently be made parties to the suit."

It is quite true that the other devisees are not indispensable parties, and that a settlement of the estate of Thomas W. Means might be made as between complainants and defendants, Adams and Means, administrators. Yet it would be very oppressive to these administrators to have more than one final settlement, and those by different courts and of independent jurisdictions, if one settlement can be made in this court which will bind all of the devisees of Thomas W. Means. This record shows that all of the devisees of Thomas W. Means can be brought before this court without depriving the court of jurisdiction. The case does not, therefore, seem to be within the provisions of sec. 737, Rev. Statutes, or that of the 47th equity rule.

The rule as laid down in Williams *vs.* Bankhead, 17 Wal., 571, by Justice Bradley, is the correct one. He says: "The general rule as to parties in chancery is that all ought to be made parties who are interested in the controversy in order that there may be an end of litigation. But there are qualifications of this rule arising out of public policy and the necessities of particular cases. The true distinction appears to be as follows: First, where a person will be directly affected by a decree, he is an indispensable party, unless the parties are too numerous to be brought before the court, when the case is subject to special rule. Secondly, where a person is interested in a controversy, but will not be directly affected by a decree made in his absence, he is not an indispensable party, but he

should be made a party, if possible, and the court will not proceed to a decree without him if he can be reached. Thirdly, where he is not interested in the controversy between the immediate litigants, but has an interest in the subject-matter which may be conveniently settled in the suit, and thereby prevent further litigation, he may be a party or not at the option of the complainant."

Although the other devisees are not indispensable parties under the ruling in Payne *vs.* Hook, they are necessary parties under the second rule, as laid down by Justice Bradley. Complainants' counsel are, we think, mistaken in thinking either Justice Jackson or Judge Taft has decided this question.

The recent case of Byers *vs.* McAuley, 149 U. S., 608, seems to limit the case of Payne *vs.* Hook to suits against executors and administrators to establish a personal liability, and not to extend to decreeing the settlement and distribution of an estate of a decedent which is in process of administration by and through a State probate court. This is upon the theory that the decedent's estate is in the actual custody of the probate court.

61

This case cannot, however, be applied to a probate system like that which prevails in Kentucky. Here the county court appoints administrators and executors, but the decedent's estate is not administered by and through the orders of that court; indeed, that court cannot order the sale of decedent's property, either personal or real, nor are settlements made there binding or conclusive upon heirs or distributees.

A suit for the settlement and distribution of this estate if brought in the State court would be in the circuit court and not in the county court, hence may be brought in this court if diverse citizenship exists, and the necessary parties are brought before the court.

This record is very voluminous and I must content myself with stating my conclusions, without reviewing in detail the evidence which brings me to those conclusions.

The first enquiry is when did the complainants, or William Means' wife and children become entitled to his share in his father's estate?

The bill alleges that a decree was entered at the May term, 1891, of the common pleas court in and for the county of Greene, State of Ohio, in a cause pending there between William Means, and Martha C. Means, his wife, and Gertrude E. Means, and Pearl E. Means and Patti Means, children of said William Means, in which that court adjudged that the said William Means, in the lifetime of Thomas W. Means, for a good and valuable consideration, had entered into an agreement with his said wife and children, whereby he agreed to settle upon them through trustees, as a reasonable settlement in equity for the maintenance and support of his family, his interest in expectancy in the estate of his father, Thomas W. Means, and agreed that upon the death of his said father, he would execute any and all further conveyances or transfers to completely vest in trustees the title to his said interest in his said father's estate. And said court by said decree further found that said agreement was a valid, binding agreement in equity, and decreed its specific per-

formance; and found that the said William Means had refused to carry the same out and to execute the said agreement, and by its decretal order, directed the said William Means to execute a deed conveying the one-fifth interest in the estate of Thomas W.
62 Means to complainants as trustees for the trust then and thereby established.

They allege in an amended and supplemental bill that William Means by a deed, dated December 26th, 1891, had conveyed to them as trustees, his said interest in his father's estate, to be held in trust as decreed by said common pleas court of Greene county.

In the answer of the administrators, Adams and Means, they say that they have no knowledge or information that this pretended agreement mentioned in the bill between William Means and members of his family, was ever made, except as discovered from an inspection of the record of the Greene county, Ohio, court of common pleas, mentioned in the bill, "but they have reason to believe that such an agreement was never made and therefore deny the same was ever made."

The answers also allege that at the time and before said pretended agreement for a family settlement was made, if made at all, William Means was hopelessly insolvent, and if made it was with the intention of defrauding his (Means') creditors, including defendants, and that all of the members of his family knew of William Means' insolvent condition at the time it is alleged such agreement was made.

The complainants, to sustain the allegations which are put in issue have filed copies of the decree of the common pleas court of Greene county, Ohio, and the deed of William Means, dated December 26th, 1891, and taken the depositions of John Means, Evan E. Williams, C. W. Baker and H. P. Whitaker.

The adjudication in the common pleas court as to the time of the alleged agreement between William Means and his wife and children is not binding upon the defendants, nor indeed is it evidence of the making of the agreement at any time. Those proceedings are binding upon the parties before the court, but not upon those who were not parties; hence complainants must prove by other evidence than by that source the fact of an agreement for or an assignment of William Means' expectancy in his father's estate before his death, or any agreement or assignment of said interest prior to the decree of the common pleas court of Greene county.

That decree only binds the parties before the court; hence proves the interest of William Means in his father's estate has passed to the complainants as trustees, as of the day of its entry, but does not and cannot bind defendants who were not before the court.
63 Owings *v.* Hall, 9 Pet., 607.
Hale *v.* Finch, 104 U. S., 261.

I am satisfied, considering all of the evidence presented by the parties upon this issue, complainants have failed to prove the existence of any agreement for or assignment by William Means of his expectancy in his father's estate, or of his share in his father's estate after his death, prior to the transactions in October, 1890, between

William Means and defendants, Adams and Means, administrators of Thomas W. Means, deceased.

If there was in fact a valid and enforcible agreement between William Means and his wife and children, by which he agreed to transfer his expectancy in his father's estate, or his share in said estate after his father's death, prior to the execution of the receipts in October, 1890, it is not satisfactorily proven against defendants in this record, nor is there any satisfactory evidence that if such an agreement existed the defendants had any notice or knowledge thereof prior to the execution and delivery of the receipts and the surrender of the notes on the 16th of October, 1890.

I do not understand that either Mr. Baker or Whitaker proves such an agreement, or notice or knowledge by Adams and Means, administrators, of any agreement.

The conduct of William Means, as proven in this record, after the death of his father, is utterly inconsistent with the theory that he had agreed to transfer his expectancy in his father's estate before his death to his wife and children, or for their benefit. If such an agreement existed William Means' entire conduct after his father's death, was most disreputable and dishonest. Hence, the court is not satisfied with the general and obscure statements of Mr. Williams, and do not think they prove the existence of any such agreement, before the death of Thomas W. Means.

Thus the question of whether the notes of William Means, payable to his father and unpaid at the time of his father's death, should be considered as gifts or debts, must be determined without regard to the alleged interest of William Means' wife and children in the estate of Thomas W. Means, prior to the agreement in October, 1890.

We are inclined to the opinion that the word "advances," as used in the 5th clause of this will is not used in an unlimited sense but is limited by the use of the word "advancements." That the testator used the words "advances" and "advancements" as
64 synonymous, and thus only such advances as he had made and charged on his books, or such as he might make thereafter and charge on his books, which would be considered in the absence of a will "advancements," were intended to be gifts.

The language is "I have made advances to my children which are charged to them respectively on my books, and I may make further advances to them respectively * * * which may be charged on my books to their respective accounts; I desire the equal provision herein made * * * to be a provision for them respectively in addition to said advances made and that may hereafter be made, and that in the division, distribution and settlement of my estate such advances * * * be treated not as advancements but as gifts not in any manner to be accounted for by said children and grandson."

It is true the testator declares these advances are not to be treated as advancements, but why use this word at all unless the testator had in his mind to limit such advances to such as would be advancements?

The testimony of John Means proves that prior to this will of July, 1880, his father, Thomas W. Means, intended and had in his prior wills charged his children with advancements made by him to them, and his books show that he entered these accounts of advancements and that he equalized his advancements to his children on the 9th of September, 1873, by a credit of $80,000 to each of his five children, and that he again, after the making of this will, equalized his four surviving children, Mrs. Culbertson having died, by a credit to each of them of $100,000. The testimony shows that some of his property and money was then given to make this equalization, and that his children knew of this purpose of their father, and that William Means received a considerable amount of property at that time, and that it was necessary to give a check for $700 to make his advancement an even $100,000.

These entries of May 14th, 1884, were the last credits made by Thomas W. Means on the several accounts of advancements or advances to his children, and these entries substantially close these accounts, except the account of John Means.

These accounts were evidently regarded by Thomas W.
65 Means as accounts of his advances or advancements to his children as shown by the statement that "no interest should be charged on this account on final settlement or any other time," which was written at the top of pages 220, 280, 281, 287 and 320 of his ledger and signed by him; and also by the fact that he equalized his children by the credit of $100,000 to each, and that said amounts were entered upon their accounts of advances.

John Means' account does include items which were neither advancements or advances, whatever may be the meaning of that word as used in the will, as he himself proves.

Thus, he received $50,000 from his father August 1st, 1881, to be invested, not for himself, but for his father. This item is charged to John Means and he is credited by the subsequent investments.

Such entries as these, made or directed by John Means are not inconsistent with the general statement that the several accounts were intended to show the advances made by Thomas Means to his several children and the character of those advances, which were not in the shape of notes, or money loaned and evidenced by written promises to repay him.

We do not think that the 5th clause of Thomas W. Means' will should be construed to include debts which his children might owe him at the time of his death, which were evidenced by his or her obligation to repay him, and which were not entered on his books as advances.

It is not to be overlooked in considering this clause of the testator's will that the language is "I have made advances to my children, which are charged to them respectively on my books and I may make further advances to them * * * which may be charged on my books to their respective accounts." Thus the testator clearly contemplated the exercise of his own will in the future and indicated the mode by which his will in that regard could be

known, *i. e.*, by the charges on his books to their respective accounts.

I am inclined to the opinion that the words "which may be charged on my books to their respective accounts" is equivalent to "shall be charged on my books to their respective accounts;" but if incorrect in this construction certainly this language indicates that the charging on the respective accounts was the mode by which the testator would indicate the intention to make an advance, and thus a gift, after his death: and unless this evidence existed,
66 the intention to have made an advance, using this word in its broadest sense, a gift, must be clearly and distinctly proven by other competent evidence.

In this case the various sums of money which were paid to and for the benefit of William Means and for which he executed notes to his father, are not charged on William Means' account of advancements or advances, which was already open, but they were entered on another account called "current account," which was opened with the acquiescence of William Means, and for the very purpose, as he knew, to prevent any question being raised as to these debts coming under the provision of the 5th clause of his father's will.

It is true this current account was opened, and the entries made thereon by the direction of John Means, attorney-in-fact of Thomas W. Means, but he had the authority to do this, and it was consented to by William Means, with full knowledge of its purpose. John Means proves that his father had a general knowledge of what he was doing, as his attorney-in-fact, for William Means, and authorized him as his representative to do whatever he thought best for him. Under this authority, John Means, representing his father, always took notes payable to his father for moneys paid to or for the benefit of William Means, and in some instances with an express agreement by William Means that the amount thereof should be paid out of his share of his father's estate.

But it is said by learned counsel that these notes were always taken after the money was paid to or for the benefit of William Means. This fact, if true, does not lessen the effect of the execution and delivery of these notes, since William Means knew the purpose of John Means was to prevent the money paid to and for his benefit coming under the provisions of his father's will. When the first money, $125,000, was paid to the Metropolitan bank, and William Means' individual debts to the bank taken up, under the hope that this payment might aid in stopping a criminal prosecution, william Means may not have known whether it was his father's or his brother John's money which had been thus used; but he knew it was his father's money when the note was sent to him by his brother John to be signed, and when he executed and returned it to John Means, and he knew why the note had been required. He also knew when he executed and delivered all subsequent notes payable to his father, the purpose was to create a debt to be paid out of his share of the estate of his father, and not to be advances which would become gifts after the death of his father.

67 Both William Means and his brother John Means knew the contents of his father's will, and this record, I think, clearly proves that all of the moneys, except the $125,000 paid to the Metropolitan bank on the 15th of February, 1888, which were paid to or for the benefit of William Means by John Means as the attorney-in-fact of his father, was with the understanding between them that the moneys thus paid were to be debts due his father, and were not to be advances under his father's will.

There was a like understanding between them when the note was executed to his father for the $125,000 paid to the Metropolitan bank, and sent to his brother John as the attorney-in-fact of his father. The collateral which John Means received from the Metropolitan bank, and which belonged to William Means when he paid his individual debt to it, was sufficient to cover this payment had William Means refused to recognize an indebtedness to his father for this payment. Hence that payment, if made without a previous understanding between William and John Means, as attorney-in-fact for his father is immaterial since the collateral would have repaid the debt in that instance. Indeed, the fact that John Means obtained the collaterals belonging to William Means, upon his order, from the Metropolitan bank, is itself strong evidence that neither John nor William Means intended this payment of $125,000.00 to be an advance under the provisions of Thomas W. Means' will. If that had been the intention or expectation, William Means would have retained these collaterals, or if he allowed them to be delivered to John Means they would have been given to him as William's agent, and be held under his direction and not as a collateral for the money paid to the bank and to be applied to its repayment. I see nothing in the correspondence between the brothers John and William Means which indicates any other intention than that the moneys paid to William Means or for his benefit in taking up his debts, etc., were to be debts to Thomas W. Means and were to be paid out of William Means' share of his father's estate. There is no evidence of any other intention or expectation in the entire correspondence.

William Means, on the 16th day of June, 1890, soon after his father's death and before administration had been taken on his estate, left with Mrs. Adams, his sister, and mother of Thomas M. Adams, who was afterwards appointed one of the administrators of Thomas W. Means, an order directing that [illegible] debts should be taken out of his distributive share of his father's estate. This
68 consent was, however, subsequently withdrawn under the advice of his attorney, Mr. Jordan, but on 16th of October, 1890, with full knowledge and by the advice of his lawyers, he executed to the administrators of Thomas W. Means a receipt for the full balance of the debts due the estate, amounting to $136,035.75, and received from them the collaterals which remained undisposed of.

It is further insisted that these notes were given, and the agreement to charge William Means' share of his father's estate with the debts, was made in order to protect him from his creditors. It will

be observed in this connection that most of the money paid by the estate of Thomas W. Means to and for William Means went to pay his debts, and seemingly, from the record, all of his debts were paid except such as he was subsequently made liable for by reason of his actions and conduct as an officer of the Metropolitan bank; and further, that if the purpose had been to protect William Means from his creditors other than those whose debts had been or were paid, this protection could only have been to the extent of the collaterals, and it would have been a much more effectual way to have avoided his creditors, to sell those collaterals outright and use the proceeds as he might desire.

William Means' expectancy could not have been reached by his creditors, and if advances under the will were to have been really made, there was no occasion to take notes. It was only necessary either to hand him the money or pay it for his benefit, and thus he would be thoroughly protected.

It is a much more natural and reasonable conclusion that the execution of the notes and the agreement to pay them out of William Means' share of his father's estate, represented the true condition of things, than to suppose that he would have run the risk of losing the benefit of those advances, so large in amount, by pretending to create a debt merely for the purpose of saving a sacrifice upon the collaterals which he owned, and which could have been readily sold, though perhaps at some sacrifice. To attribute to William and John Means such a motive in this transaction would be unreasonable in itself and unsustained by any evidence in the case.

As to the mental capacity of Thomas W. Means at the time of these payments and the execution and delivery by William Means of his notes therefor, there is much conflicting testimony.

69 If he at the time was without mental capacity sufficient to authorize his attorney-in-fact, John Means, to make these payments, then, of course, these payments could not be advances under his will. The complainants allege in their bill that "in the lifetime of Thomas W. Means and some years prior to his death he became and was by reason of age and other infirmities an imbecile, and incompetent to contract or transact any business of any kind. That during all said years of imbecility and incompetency of said Thomas W. Means, the respondent, John Means, who was his eldest son, conducted and managed the business of the estate of said Thomas W. Means as a self-constituted trustee, acting under and in pursuance of a power of attorney, claimed to have been executed by Thomas W. Means prior to his said imbecility and incompetency." This allegation is denied by the defendants, John Means and Adams and Means, administrators of Thomas W. Means, except as to the last year before his death, and each side has taken much testimony upon the issue thus made. Counsel for the defendants now insist that this allegation in the bill is conclusive and prevents the complainants from obtaining the relief asked for as to payments made to and for William Means out of the estate of Thomas W. Means, as the 5th clause of the will could only apply to advances made by Thomas W. Means or by his authority.

Although the allegation of the complainants as to the imbecility of Thomas W. Means is in a bill in which it is sought to have these several payments treated as gifts by Thomas W. Means, under the 5th clause of his will, this allegation is made in that part of the bill which is against John Means, and has for its purpose an accounting by him of his acts and doings while acting as the self-constituted agent of his father, which is a distinct cause of action from that against the administrators of Thomas W. Means for a construction of his will and a setting aside their action and that of William Means by which these payments had been considered as debts and charged against William Means' share of the estate.

These allegations, therefore, should not be conclusive in favor of the administrators of Thomas W. Means, because they have denied them, and we think have sustained their denial by a preponderance of evidence.

We conclude, after carefully reading the evidence on the subject of the mental condition of Thomas W. Means, that though quite old and feeble, both mentally and physically, he had a general understanding of the trouble in which his son William was involved and what was being done for him by his son John, as his attorney-in-fact, and that he consented to what was being done by his
70 attorney-in-fact, leaving the manner of doing it and the details to his son John. He had, we think, sufficient mental capacity to understand and did understand that his son William was in trouble, and that he was being pecuniarily aided by his son John, as his attorney-in-fact, and in a general way how the assistance was being given to William Means by his attorney-in-fact.

We conclude, therefore, that Thomas W. Means is legally bound by the acts of John Means, as his attorney-in-fact, in the transactions with William Means now involved in this litigation.

It is alleged by the complainants that the receipt for $136,035.75 given by William Means to the administrators of Thomas W. Means, on the 16th of October, 1890, was given because of an agreement by and between said Means and said administrators "that they (administrators) would give to the said William Means twenty-five thousand ($25,000.00) dollars in money, and surrender to him said notes and memoranda, thereby intending to defeat the just claims of these trustees and their beneficiaries." These allegations are denied by the administrators of Thomas W. Means and are not proven by complainants. It is not improbable from the testimony that William Means expected at the time or about the time of signing this receipt for $136,035.75 and delivering it to the administrators, that he would get from the estate part of or perhaps a sum equal to the amounts which his brother John and sister Margaret and Mrs. Adams had paid for him (William Means), amounting to over $26,000, but it is not proven that there was any agreement to that effect between the administrators of Thomas W. Means and William Means or between William Means and either of his sisters or John Means. It was an expectancy arising from the previous generosity of his brother John and sisters, and not from any agreement or understanding between William Means and the adminis-

trators, and not a part consideration for signing the receipt for $136,035.75. Nor is it proven that this receipt was given or received to defeat the claim of the complainants as trustees, or their beneficiaries.

On the contrary, we think the testimony proves that William Means, in this transaction, was carrying out his previous agreements with John Means, as attorney-in-fact of his father; that it was voluntarily done without consideration paid at the time or agreed to be paid, and that the administrators, Means and Adams, had no knowledge or notice of any claim to said William's share in his father's estate, other than William's himself, who seemed to
71 act in his own interest and behalf alone, and who had full knowledge of his legal rights under his father's will.

For these reasons I conclude that the receipt executed by William Means on the 26th day of October, 1890, to the administrators of Thomas W. Means, deceased, should not be surrendered by them for cancellation; but that the balance due by William Means to the estate of his father at his death, was properly a debt and not a gift, and that his share of his father's estate was chargeable with it as a debt.

The execution and delivery of this receipt by William Means and the receiving of the remaining collateral was a *pro tanto* settlement between William Means and the administrators of Thomas W. Means, and the correctness thereof should not be enquired into in the present condition of this record, as there is no charge of error or mistake in the settlement. The correctness of the amount of the receipt that was given might be enquired into upon a general settlement of the estate upon proper allegations. But we have indicated that a general settlement cannot be had in the present condition of the pleadings.

The bill against John Means for an accounting and settlement of his transactions while acting as the agent and attorney-in-fact of his father, Thomas W. Means, can only be maintained if the allegations of the supplemental bill, filed February 5th, 1892, are sustained. They have not been sustained by the evidence, nor does the record show that John Means is indebted in any sum to his father on account of his transactions whilst he was his attorney-in-fact, or that his account as attorney-in-fact is other or different from that shown by the books which are in the possession of the administrators of Thomas W. Means, deceased, and which were surrendered by John Means to the defendant, Adams, who was the legally authorized committee of said Means before his death.

The bill against John Means must, therefore, be dismissed at the cost of the complainants. This dismissal of course cannot affect the right of the committeeman, Adams, or the defendants, Adams and Means, as administrators of Thomas W. Means, to have a further accounting by John Means of his acts as attorney-in-fact, if there appear to be any need therefor.

It follows from the views herein expressed that the complainants' bill against John Means must be dismissed, and that they
72 are not entitled to have the settlement of October 16th, 1890, set aside, and the receipt then executed and delivered, sur-

rendered and cancelled, or to have the debts of William Means to Thomas W. Means, existing at the time of his death, declared a gift; but the defendants are entitled to have said debts of William Means to his father, Thomas W. Means, declared not to be advances or gifts, and that they were properly taken out of his share of his father's estate.

The complainants are not entitled to a general settlement of the estate of Thomas W. Means in the present condition of the pleadings, but may have leave to amend, if they so desire, within thirty (30) days from this date.

The defendants are entitled to their costs.

The decree will be entered as herein indicated.

JNO. W. BARR.

Endorsed: Cowan, Williams, and Frazer, trustees, *vs.* Thos. W. Means, adm'r, &c. Opinion, filed May 13, 1895. Jos. C. Finnell, clerk. Opinion, filed Oct. 4, 1895. Frank O. Loveland, clerk.

Circuit Court of the United States for the District of Kentucky.

B. R. COWEN *et al.*, &c., }
vs. }
THOMAS M. ADAMS *et al.* }

This cause came on to be heard at this term and was argued by counsel and thereupon on consideration thereof, the court finds the issue joined against the plaintiffs and in favor of the defendants, and the bill is dismissed as against the defendant, John Means at the cost of plaintiffs. The plaintiffs are given leave within thirty days to amend their bill so as to make it a bill for the general settlement of the estate of Thomas W. Means, but such amendment must be upon the basis of the conclusions of the court upon the issues already joined, as stated in the opinion herewith filed; and in default of such amendment the bill shall stand dismissed as against all of the defendants at the plaintiffs' costs.

73 Endorsed: 1774. B. R. Cowen *et al.*, trustees, &c., *vs.* T. M. Adams *et al.*, ex'rs, *et al.*, &c. Entered May 25, 1895. Filed October 4, 1895. Frank O. Loveland, clerk.

Circuit Court of United States, District of Kentucky.

COWEN, Trustee, *et al.* }
vs. } Entry.
JOHNS MEANS *et al.* }

Upon application of complainants the time to amend their bill as allowed by decree of May 25th, is extended for fifteen days from date of this entry, June 24, 1895.

JNO. W. BARR.

Endorsed: Entered and filed June 24, 1895. Jos. C. Finnell, clerk. Filed October 4, 1895. Frank O. Loveland, clerk.

B. R. COWEN, Trustee, and Others,
vs.
THOMAS M. ADAMS & Others. } No. 1774.

Judgment.

The complainants having failed and declined to amend their bill herein as permitted by the order entered May 25th, 1895, or within the extended time allowed by subsequent orders of this court, it is now adjudged and decreed that their said bill be and the same is hereby dismissed, and the defendants shall recover their costs herein expended.

But this dismissal is without prejudice to the right of complainants to recover in another suit the amount of one-fifth interest in the estate of Thomas W. Means, deceased, over and beyond the amount of the receipt of William Means for $136,035.75, mentioned in said bill, and without prejudice to any issues not joined and found against them in this suit.

74 The complainants, by counsel, object to this decree and the previous order entered herein on May 25th, 1895, and except to the same.

July 31st, 1895.

JNO. W. BARR.

Endorsed: B. R. Cowen, trustee, &c., *vs.* Thos. M. Adams *et al.*, &c. Decree. Entered July 31, 1895. Filed October 4th, 1895. Frank O. Loveland, clerk.

United States Circuit Court, Northern District of Kentucky.

BENJAMIN R. COWEN, EVAN F. WILLIAMS, and A. S. FRAZER, Trustees of an Express Trust, Complainants.
vs.
THOMAS M. ADAMS and E. C. MEANS, Administrators, with the Will Annexed, of Thos. W. Means, and John Means, Respondents. } No. 1774.

Prayer for an Appeal and Assignment of Errors.

The complainants now pray the court to allow an appeal herein from the judgment, order and decree rendered herein upon the issues against them and in favor of respondents, and said complainants assign the following errors in the record and proceedings herein, to wit:

1. The court erred in finding the equities in favor of the defendant and against complainants.

2. The court erred in finding that there had been any settlement between William Means and the defendant executors of the estate of Thos. W. Means.

3. The court erred in finding that complainants were bound or in any manner affected by any settlement or agreement or adjustment of any kind made between William Means and the defendant executors subsequent to the death of Thos. W. Means.

4. The court erred in finding that complainants did not acquire the equitable ownership of the interest of Wm. Means in the estate of Thos. W. Means prior to said claimed adjustment or settlement in October, 1890—or prior to the death of Thos. W. Means.

75 5. The court erred in its construction of the will of Thos. W. Means in its finding that in said will the two words, as used in the fifth clause thereof, "advances" and "advancements," were used by the testator as synonymous in meaning, and that said section of said will had reference solely to such sums as had been advanced by testator as advancements.

6. The court erred in its finding that the defendant executors in the final settlement of the estate as against complainants shall deduct from the share of said estate coming to complainants the sum of $136,035.75 advanced by the testator to William Means.

7. The court erred in finding that complainants were not entitled to recover the full one-fifth of the estate of Thos. W. Means in the hands of said defendants for distribution after payment of debts and expenses of administration.

8. The court erred in awarding a judgment or decree against complainants for costs.

9. The court erred in its findings that defendants' administrators were not bound by the decree of the Greene county common pleas court, and in finding that said decree was not competent evidence against them.

10. The court erred in its finding that defendants' administrators did not have notice of complainants' right under the trust until after said so-called settlement in October, 1890.

11. The court erred in finding that there was no equity against John Means.

12. The court erred in dismissing said bill as to John Means.

13. The court erred in finding that complainants are not entitled to a decree cancelling said receipt for said sum of $136,035.75.

14. The court erred in finding that complainants failed to prove that an agreement was made prior to the death of Thos. W. Means and prior to the proceedings had in the Greene county common pleas court whereby William Means agreed for a good and valuable consideration to settle upon trustees in trust for his family his expectancy in the estate of Thos. W. Means.

15. The court erred in finding that when said various sums going to make up said sum of $136,035.75 were advanced they were severally advanced upon agreements then made that they should be charges against the interest of William Means in said estate.

16. The court erred in finding that the sum of $136,035.75
76 had been advanced or paid or loaned to William Means in the lifetime of Thos. W. Means from the estate of Thos. W. Means. The record discloses that the sums actually advanced or loaned was much less than said sum of $136,035.75.

17. The court erred in overruling the application of complainants to open up and set aside the decree and permit the complainants to have all matters heard in the case after the additional parties were brought.

18. The court erred in dismissing the bill of complainants for their failure to amend and make additional parties defendant.

Endorsed: No. 1774. U. S. circuit court, N. D. of Kentucky. Benjamin R. Cowen *et al. vs.* Thomas M. Adams *et al.* Prayer for an appeal and assignment of errors. Filed Aug. 7, 1895. Jos. C. Finnell, clerk. Filed Oct. 4, 1895. Frank O. Loveland, clerk.

United States Circuit Court, District of Kentucky, at Covington, December Term.

WEDNESDAY, *December 6th, A. D.* 1893.

Court met.

Present: Hon. John W. Barr, sitting as circuit judge.

B. R. COWEN *et al.*
vs.
T. M. ADAMS *et al.* } No. 1774.

It is agreed that complainants have further time until and including January 15th, 1894, within which to complete taking of their evidence before B. Perren, special commissioner. The defendants produced amendment of their answer to the bill, the amendments thereof and the supplemental bill of complainants, which is ordered to be filed. And, by consent, it is ordered that complainants' replication shall stand as replication to the matters contained in said amendment.

A copy.

Attest:

JOSEPH C. FINNELL, *Clerk*,
By F. D. COCHRAN, *D. C.*

77 Endorsed: No. 1774. B. R. Cowen *et al.*, &c., *vs.* T. M. Adams *et al.*, adm'rs, &c. Copy order. Filed January 20, 1894. Jos. C. Finnell, clerk. Filed October 4th, 1895. Frank O. Loveland, clerk.

BENJ. R. COWEN and Others, Trustees,
vs.
THOMAS M. ADAMS and Others, Adm'rs of Thos. W. Means, Deceased.

Opinion.

The complainants have filed a petition for an appeal in this case, with an assignment of errors, and move the court to allow them to appeal to the circuit court of appeals without executing an appeal bond to secure or pay the costs thereof. They have filed on this motion the affidavit of Evan B. Williams, one of the trustees and complainants, and the affidavit of Pearl Q. Means and Gertrude T. Means, and Mrs. C. Means, wife of Wm. Means. It appears from the affidavit of the trustee, Williams, that the complainants' trustees have no means whatever in their hands with which to pay or secure the costs of an appeal, and it appears from the affidavits of

Mrs. Means and two of her daughters, that her three daughters, who with her are beneficiaries of the trust which is represented by the complainants, Cowen and others, are entirely without means, and two of them make their living by teaching, and that the third daughter, who is also a beneficiary, is without means and is delicate and cannot now make an affidavit as to pecuniary condition by reason of her sickness; it, however, appears from Mrs. Means' own affidavit that she has a homestead at Yellow Springs, Ohio, which she says is unproductive and the value of which she says she believes if put to judicial sale would not bring over and probably not as much as $4,000.

This motion is made under the provisions of the act of Congress, approved July 20th, 1892, which provides:

"That any citizen of the United States entitled to commence any suit or action in any court of the United States may commence
78 and prosecute to conclusion any such suit or action without being required to prepay fees or costs or give security therefor before or after bringing the suit or action, upon filing in said court a statement under oath, in writing, that because of his poverty, he is unable to pay the costs of such suit or action which he is about to commence, or to give security for the same, and that he believes he is entitled to the redress he seeks by such suit or action, and setting forth briefly the nature of his alleged cause of action.

SEC. 2. That if such suit or action shall have been brought, or that is now pending, the plaintiff may answer and avoid a demand for fees or security for costs by filing a like affidavit.

SEC. 3. That the officers of the court shall issue, serve all process and perform all duties in such cases, and witnesses shall attend as in other cases, and the plaintiff shall have the same remedies as are provided by law in other cases.

SEC. 5. A judgment may be rendered for costs at the conclusion of the suit as in other cases."

It is claimed that this is a *pro tanto* repeal of sections 1000 and 1012 of the Revised Statutes. Section 1000 provides:

"That the judge or justice, signing a citation on any writ of error, * * * shall take good and sufficient surety that the plaintiff in error or the appellant shall prosecute his writ or appeal to effect, and that if he fail to make his plea good he shall answer all damages and costs where the writ is a supersedeas and stays execution, or all costs only where it is not a supersedeas as aforesaid."

SEC. 1012 provides: "Appeals from the circuit courts, and district courts acting as circuit courts, * * * shall be subject to the same rules, regulations and restrictions as are or may be prescribed in law in cases of writs of error."

It seems to me that the act of July, 1892, would cover, giving it a liberal construction, an appeal, and should be liberally construed to include trustees' prosecuting suits, who have no means, as well as individuals, except that beneficiaries must show inability as well as the trustees in such cases. I do not think, that as Mrs. Means has shown that she has a homestead, which is certainly according to the evidence worth $4,000, that I should grant the prayer of the

petitioners to allow the appeal without executing a bond, and will fix the bond to be executed at $1,000; but in view of the
79 affidavits made and the pecuniary condition of the parties, I think I may make an order similar to the order made by Judge Jackson in a case pending in this court, of Caspars *vs.* The Covington Reservoir.

J. W. BARR.

Endorsed: B. R. Cowen *et al.*, trustees, *vs.* Thos. M. Adams *et al.*, &c. Memo. Opinion. Filed Aug. 7th, 1895. Jos. C. Finnell, clerk. Filed October 4th, 1895. Frank O. Loveland, clerk.

JOHN MEANS, being by me first duly sworn, testified as follows:

Direct examination by Mr. GLIDDEN:

Q. 1. Please state your name, age and residence.

A. John Means; 63; Ashland, Ky.

Q. 2. Please state the date of the death of your late father, Thomas W. Means.

A. I am told it was the eighth day of June, 1890; I was not at home.

Q. 3. For what length of time have you resided at Ashland, Ky.?

A. Since the fall of '57.

Q. 4. Prior to that time, where did you reside?

A. At Catlettsburg and at Buena Vista Furnace, Ohio Furnace, and my father's home.

Q. 5. State whether or not during the lifetime of your father you had any connection with his business, and if so, what, and to what extent?

A. I had connection with his business—yes; as clerk, and I had the management of different parts of his business, concerns where he was interested, and the latter part of his life I kept his books for several years wholly.

Q.14. From the time you arrived at your majority, up to the time that your father ceased to have anything to do actively with business, you were always his confidential business man, were you not, Mr. Means?

A. Well, I was when I was near him.

Q. 15. Nearer him, probably, than anybody else? He had great confidence in you?

A. He had great confidence in me.

Q. 16. What was the date, Mr. Means, of the first advancement made by your father to any of his children? Have you any book here that will refresh your recollection?

80 A. About—I think the first to me was made in the spring of '54.

Q. 17. The first advancement made to you?

A. That is my recollection.

Q. 18. Was that the first advancement made to any of his children?

A. I think so.

Q. 19. In that connection I will ask you the relative ages of the children. Who was the oldest of the family?

A. I was the oldest. William was the next; Mrs. Adams next; Mrs. Culbertson was the next and Margaret next.

Q. 40. Do those stocks that were transferred to you by your father appear in that aggregate?

A. They do.

Q. 41. All of them?

A. All of them.

Q. 42. Do the books show each transaction of advancements of stocks or money and what it was?

A. Yes, they do.

Q. 43. When did you first become interested as a part owner or stockholder in any of the business ventures of your father?

A. I think in the spring of '54.

Q. 44. What did you then become interested in?

A. In the Kentucky Iron, Coal and Manufacturing Co.

Q. 45. How did you acquire the interest in the business in '54?

A. I subscribed for so many shares of stock in the company. He was a stockholder.

Q. 46. He was a stockholder and you subscribed for shares?

A. Both of us. I subscribed for shares in my name and he in his name.

Q. 47. Where did the money come from to purchase the shares that were subscribed for by yourself?

A. I paid part of it and he paid part.

Q. 48. What was the extent of the subscription?

A. The amount subscribed for?

Q. 49. Yes.

A. I subscribed for five hundred shares, which would be twenty-five thousand dollars.

Q. 50. Now, what part of that was paid for by your father that you subscribed for?

A. That I cannot tell.

Q. 51. Are you charged with the amount that your father
81 then paid on your account for your subscription of stock as so much money advanced to you?

A. I am charged for the payments he made for me when he paid them.

Q. 52. At the time he made the payments?

A. Yes. Not in the spring of '54.

Q. 54. Because he paid the installments, you were charged; is that correct?

A. No. To answer the question as you stated it, would leave the inference that he paid it all.

Q. 57. Are the books in existence which will show the amount as charged to you?

A. Yes, sir.

Q. 61. What other dealings did you have with him than those that appeared upon the book?

A. Than what appeared on books?

Q. 62. Yes, sir.

A. Well, not many. I borrowed sometimes from him and gave note.

Q. 63. When did you borrow any money from him and give a note for it? I suppose that will appear upon your books, will it not, in the bills-receivable and bills-payable account?

A. Yes. It is difficult to give dates.

Q. 95. Did you increase your holdings above $25,000 prior to your selling back to your father?

A. Never increased above that at any time.

Q. 96. When did you sell that stock back to your father?

A. About the 30th of June, '62.

Q. 97. About '62?

A. About '62.

Q. 98. When did your father give it back to you?

A. I don't recollect.

Q. 99. Do you recollect at what price you sold it to him?

A. I transferred it back to him for just what I had paid on it. He credited me with it.

Q. 102. At the time of his giving it back to you, did he give you more stock than the $25,000?

A. Not so much.

Q. 103. Do you remember the amount?

A. $10,000. That is the part.

Q. 104. Was that charged to you on the books?

A. It was.

Q. 105. At what price was it charged?

A. I think at fifty per cent.

82 Q. 106. Do you remember the date of that transaction Mr. Means, approximately?

A. No. He transferred to all the living children the same amount. To my recollection, myself and William and two sisters, ten thousand each.

Q. 107. Of the stock?

A. Yes, sir.

Q. 108. And it was charged to each at the same rates?

A. Yes, sir. The fact is this. The stock, at the time of subscription, it was supposed it would never more than thirty per cent. be called for; it would pay itself up in profits. In '65, we knew that it was a bad stock—a poor investment. I hadn't anything like $25,000 when I subscribed. I did it because father told me to subscribe, that he would pay it for me. He helped me pay, and in '65 he said "You took that stock on my account. Transfer me back, keeping $5,000." I was elected the president of the company. I had been a director for some years and he wanted me to keep the stock for that reason.

Q. 109. After this investment in '54, what was the next company or business in which you became interested in connection with your father? You say that was the first.

A. I think it was in the Big Sandy Packet Company.

Q. 110. Give us, as nearly as you can, the date of that investment and the amount of the interest that you took in it.

A. Early in '56, and he paid for me, I think, $1,200.

Q. 111. What amount of stock did that purchase?

A. It was a partnership then. It was probably ten years before it became an incorporation.

Q. 112. What interest, proportionate, fractional interest did you then purchase?

A. I think it was a tenth.

Q. 113. How much were you to pay for that $\frac{1}{10}$th?

A. That is all I paid.

Q. 121. You were charged with the $1,200 that was paid by your father for you at that time, Mr. Means?

A. I was charged with whatever he paid. I think it was $1,200.

Q. 122. That proved a profitable investment, did it not?

A. Yes.

Q. 123. That stock you retained after it was issued to you?

A. Yes. I bought and sold it both.

83 Q. 124. But you never returned that stock to your father?

A. Oh, no.

Q. 126. Didn't the $1,200 that you paid, or whatever was paid, the time secure you a $\frac{1}{10}$th interest so that when it was incorporated, you got $\frac{1}{10}$th of the capital stock or $\frac{1}{20}$th, whichever you said was?

A. My recollection, I had $\frac{1}{10}$th in the partnership but not in the corporation.

Q. 127. What proportion did it secure you in the corporation?

A. I don't recollect. The corporation was formed to take in other boats—other companies. I think the other companies were partnerships too—some of them, at any rate, and the stock was fixed, the boats valued, and stock issued to each member of the different companies in proportion to what he would be entitled to by the value of his own company.

Q. 128. Then you received the one-tenth of the value of the Big Sandy Company's property as estimated at that time for the purposes of the stock company?

A. I think so. I speak indefinitely, for my interest may have been changed somewhat. I think it was—either before or at the time.

Q. 134. At your leisure, I wish you would be kind enough to look, so you can let us know. Now, that brings us to 1856. What was the next venture or business in which you became interested after the Big Sandy Packet Company?

A. I think Bank of Ashland.

Q. 135. Please give us approximately that date and the amount of that investment?

A. I think it was in the summer or fall of '56. He transferred to me stock on which payments were made, and I do not recollect the amount. It was not paid in full.

Q. 136. Do you recollect the amount of stock that was transferred to you?

A. No, I do not. It was not paid in full, and I do not know the number of shares it represented.

Q. 139. Were you then charged with the amount that he had paid upon that stock that was transferred to you?

A. Yes, sir.

Q. 140. That stock you retained, did you not, Mr. Means? That is, I mean as between you and your father. It was never returned by you to your father, was it?

84 A. I don't think I ever transferred any of it back to him.

Q. 141. That was a profitable investment, was it not?

A. Well, it paid about a fair dividend—sometimes ten per cent. and sometimes only six.

Q. 145. Were you engaged in the management of your father's business upon a salary?

A. I was.

Q. 146. For what length of time?

A. Well, I am not sure that I answered your question right. Do you mean a salary from him or from the companies? A salary from him? No. He never paid me a salary.

Q. 147. The salary that you drew, then, was from the various companies that he was interested in, for various services rendered to that company?

A. Yes, sir.

Q. 149. When did it cease?

A. I changed from one company to another, sometimes, and my salary would cease with the company when I left it. I think after 1889 or '90 I got no salary from anything.

Q. 159. How was your interest in Means, Kyle & Co. paid for, whatever interest you took there?

A. I think father paid all.

Q. 160. That was a very profitable business, was it not?

A. For a time; yes, sir.

Q. 161. Till it was changed into a corporation, it was very profitable, was it not?

A. Yes, sir.

Q. 166. What amount of that stock did you receive in the corporation?

A. $50,000, I think.

Q. 167. For what amount are you charged on the books for that $50,000 of stock?

A. Whatever father paid.

Q. 168. What he paid originally, in the original purchase?

A. Yes. What he paid is what he charged me. Part of that $50,000—I think a considerable part of, it was profits.

Q. 169. Did you at any time increase your holdings of stock in Means, Kyle & Co. beyond the $50,000?

A. Once, by inheritance from a brother who died—one-fifth of his interest.

85 Q. 238. Now, to pay for that investment, did you obtain any money from your father or your father's business, or was it charged to you?

A. I don't think there was any money from him for that Low Moor. I had loaned him some money and he paid me back, I think, while I was paying it, and in that way I got my money.

Q. 239. You had loaned him some money?

A. Yes, sir.

Q. 240. When?

A. When Means, Kyle & Company was organized as a corporation, or about that time, I loaned him money and all the dividends for some time that were due me from the company he used in paying for his interest when he bought out the other.

Q. 241. When he bought out the other members?

A. Bought out William Means and Mr. Lewis and Mr. Slemmer here in Cincinnati.

Q. 242. Was that prior to the organization of Low Moor?

A. Yes, sir. That is what I say. While I was paying for Low Moor he paid me some of that money back and the reason I made the explanation was, that the examination of the accounts will show that I had credits and charges that made a great amount of business with and for each other and it is impossible for me to repeat it now after the lapse of fifteen or twenty years. When I had it on a book I knew I could loook for the information and it did not impress me like an arrangement with a man on the street. You are liable to recollect that.

Q. 243. Did I understand you to say a few minutes ago, that you were interested with your father in nearly all companies or business ventures in which he was engaged?

A. Most of them; yes, sir. I was interested in the same companies. When he went into anything, he said he took it for his children (and at the time of transfer to some of us,) the Kentucky companies were partnerships until lately and it was not so convenient to transfer. I never was a stockholder.

Q. 244. It is true, is it not, Mr. Means, from the time you became actively in business that your father made no venture without conferring with you and consulting?

A. That is not true.

Q. 245. What ventures did he make without your knowledge and without consulting you?

A. He went into that Means, Hall & Company. I did not know anything about it until it was done. I did not know that he
86 was going into the Bank of Ashland until it was done. I was not advised. There were many other things. I cannot tell all about it. He would buy and sell without asking me.

Q. 246. Say since 1866, what ventures or business engaged in has he made without conference with and consulting you?

A. He went into the Second National bank without my knowing it, and when he did, I advised him against it.

Q. 247. That is when he originally went into the enterprise?

A. I am pretty sure that was after '66.

Q. 249. When did he move to Ashland?

A. I think the spring of '82—probably in April.

Q. 250. Was there any venture or investment made by him after

he moved to Ashland without conference with and consultation with you?

A. I don't recollect of any. If he could see me he would have advised with me, I am pretty sure. But at Ashland there was Mr. Hugh Means, who was the only brother living then, and then there was Mr. Russell, his partner, and there wasn't much that any of us did but what the other three knew about before going into it. And in the investment of the Norton iron works, I was consulted for some time by my father and uncle and Mr. Russell before I would take hold of it and go into it. I never went into anything with more hesitation than I did into that, I think. That was in '72.

Q. 251. But you went into it at the time it was organized, at the same time he did?

A. I went into it after hearing the arguments in favor of it. I subscribed just what he said. He wanted me to subscribe for it.

Q. 252. It is true, is it not, Mr. Means, that as a result of your business investments you have accumulated a large personal estate independently of your interest in the estate of Thomas W. Means?

A. Yes, sir; I always tried to live within my income.

Q. 253. What books were kept by Thomas W. Means or books that recited or contained entries of the business transactions of Thomas W. Means?

A. Journal and ledger. Some book-keepers would have a day book and journal and ledger. His journal and day book were one.

Q. 254. The ledger and journal of Thomas W. Means?

A. Yes, sir. The various companies had their own books, of course.

Q. 255. What other books, if any?

87 A. He had what book-keepers call a bill book that recited notes receivable and payable.

Q. 257. Prior to his going to live at Ashland, where were they kept?

A. He kept them—sometimes he would have them at his house and sometimes at the office.

Q. 258. Who then posted them into the ledger?

A. He had different ones. My brother Tom, Captain Culbertson and William Means and Arch Means and nearly every clerk the firm had had some writing to do on his books, and a man by the name of Fletcher.

Q. 259. Did he have any separate book in which he kept a separate account of the advancements made to his children?

A. No; I never knew of it if he had. He never mentioned or showed it to me. I don't think he did.

Q. 260. Is there any account anywhere of those advancements that you know of except as they appear in the journal and ledger to which you have referred?

A. I do not know of any account. I kept on my own account a memorandum of what I received from him.

Q. 264. In the ledger of Thomas W. Means, was there an account opened with each of his children?

A. Yes, sir.

Q. 265. And in those accounts were they severally charged with the amount that they received from their father at the time it was paid to them?

A. I think it was charged; everything that he intended that way.

Q. 266. Are those the books that are here—the two books that are here, Thomas W. Means' books?

A. Yes, sir; that is the ledger. That is an old journal, and that is full. The smaller one he begun when he was an old man and he was not doing much active business. He said that would hold his business.

Q. 267. It was the smaller one?

A. The smaller one.

Q. 268. Now, do these two books contain all of the advancements that were ever made to either of the children—yourself or either of the others?

A. I think they do. All that I know about.

Q. 269. Well, in asking the question, I desire to use the word "advancement" not in its technical sense, but to include all moneys that he has let any of his children have at any time upon any account. Do all such moneys appear on these two books?

88 *Q.* I think they do. He might have had dealings with the others that I did not know anything about, but I do not think he had to any extent.

Q. 270. So far as you know, they are all included in these two books?

A. I refer to everything the ledger goes back to.

Q. 271. Do these books which you have referred to, the three, show the amount Thomas W. Means invested at various times in divers business ventures, and the amounts that he received from them severally?

A. I think they do. Of course I cannot answer that from my own knowledge, but he kept those books——

Q. 272. That was the intention of the books?

A. That was his intention—to show everything.

Q. 274. In whose handwriting is the book started? Is it yours?

A. That is not mine. I think it is Mr. Bull's, the clerk at Hanging Rock.

Q. 275. Turn there to about the date of his going to Ashland?

A. I was absent when he came to Ashland, but my recollection is that that trip was made in '82, and I returned in about ten days afterwards, and here is an entry, March 12th, by James, and here's April 24th, is the next.

Q. 276. When does your handwriting commence?

A. 27th of June, 1882. Now, without looking further, I think that probably every entry afterwards is made by me, but I could not be sure of that.

Q. 277. What was the age of your father at the time of his death?

A. He was in his 87th year.

Q. 278. He was blind for some time before his death, was he not, Mr. Means? He lost his sight?

A. Yes, sir; he lost his eyesight. He stopped reading books and

papers, I think, about the first of 1888. It might have been a little earlier, or later. I cannot fix it exactly, but it was about that time.

Q. 279. Well, immediately prior to his death he was entirely imbecile, was he not, mentally?

A. Well, his memory was imperfect and he could hardly be said to have much mind at the time of his death and just before.

Q. 285. Mr. Means, I noticed, in looking at the index to the ledger that is produced, opposite the account of John Means, is written, and also opposite the account of William Means, and also opposite the account of Margaret A. Means—the index to the account, is written, in red ink, the word "Advances;" please state in whose handwriting that is?

89 A. Mine.

Q. 286. When was it written there?

A. Give me the first entry on that account, which will probably give me the date.

Q. 287. There is the opening of the account on page 19 of John Means, opposite to which in the index is the word written "Advances." That is what I understand you to ask about?

A. No. I can fix the date by seeing where the current account is opened.

Q. 288. The current account you will find opened on page 243.

(Witness takes the book and also the journal, and says:)

A. The 16th of February, 1888. That is the John Means account.

Q. 289. The others you will find the same date, I think?

A. These accounts I have to get from the books. Margaret Means is the 16th of February, 1888. William Means is the 15th of February, 1888.

Q. 290. Now, when was this word advances made in red ink in this index to this ledger?

A. Probably the same date.

Q. 291. At the time that these accounts current were opened?

A. Well, what account are you talking about? I am speaking now—William Means is probably at the date the account is opened with him and John Means the time the account was opened with him and Margaret Means the time the account was opened with her. There are different dates.

Q. 292. Then, in order to be exactly correct, this word was written opposite John Means here on the 16th of February, 1888, and opposite William Means on the 13th of February, 1888, and opposite to Margaret A. Means February 16th, 1888?

(Counsel was referring in this question to index of ledger.)

A. I think so.

Q. 293. There is the same thing opposite the account of Mary Ann Adams?

A. I don't think I had a current account with her and that was probably written about the same time with the others. I will say here, I do not have a distinct recollection about the writing of these

as to the dates. These other accounts were fixed to an even
90 sum—the four accounts, John, William, Mary Ann and Margaret, and when I found that these other transactions were taking place and it was simply going to change that even sum, it was a different matter. This was the current business as with any other individual and I marked the accounts so as to make them plain and I marked them with red ink so that they would attract my attention or anybody else's.

Q. 294. Now, Mr. Means, does not the account of John Means, which appears upon pages 19, 281 and 380 of the ledger, the same being the accounts which you have in red ink characterized as advances, include the current transactions between yourself and Thomas W. Means for the time which is comprehended within the opening of that account and up to the last entry in the account? Isn't that what the account is?

A. Yes, sir; it is.

Q. 295. The same is true with regard to the account of William Means on pages 40, 220 and 381 of the ledger, is it not?

A. Yes.

Q. 298. Turn to page 380 of the ledger, the account of John Means. That account is balanced May, '84, is it not?

A. Yes, sir, and balance brought down.

Q. 300. Why were those entries made and a credit of $400 and $225? Was it not to close that account?

A. That does not change the balance. Not to close the account; no. Those entries simply represent transaction. As to the four hundred dollars. I am charged with $400 on the fourth of June, 1887. On the 29th of September, 1887, I collected $225 of interest for him on coupons. That made the $225 debit. Now the credits. It may save a little to say that I drew the $400 to make a trip to California on his business and drew that for expenses; that is as to the debit four hundred dollars. I got home on the first or second of July following. My expenses in the trip were $219 and fifty-five cents and I returned $180.45 to his credit in the bank—cash or check—making the $400 transaction. On the first of October, 1887, I deposited in the Ashland National bank $225 to his credit, closing that.

Q. 302. When was the word advances written in red ink over that page 380? Is that in your handwriting?

A. That is in my handwriting. I think at the dates at which the current account were opened. That has been answered.

Q. 303. That was answered in regard to the word advances
91 in the index. That same answer applies, does it, to this word advances wherever it is written in red ink; is that correct?

A. I think the word advances was written when the current account was opened, and Mrs. Adams' account, I probably wrote that at the same time. I see there is no current account for her.

Q. 304. I see in Mr. William Means' account on his ledger the balance carried over to page 381, of $99,300 and then I find another entry here of "A. N. Bank No. 2, 148,700." That is under date of May, 1884. That $700 added to the $99,300 makes just one hun-

dred thousand dollars, and in his account appears eighty thousand dollars in one item as having been advanced at the time that that entry appears in the book of $80,000 advanced to each of the children. That is where $80,000 is advanced to each one of the children, is it not?

A. No, sir.

Q. 305. What is it?

A. It is a credit to each one of the children.

Q. 306. It is a credit of $80,000 advanced to each one, isn't it?

A. Here is what it is. I will read from the book. (Journal, page 4) "December 9, 1873. Amount to reduce the balances against these accounts having been given to my children." Signed "Thomas W. Means" in his own writing.

Q. 307. What is the date of that?

A. December 9th, 1873. I guess we had better name the accounts it refers to: John Means, William Means, Mary Ann Adams, William Means, S. J. Culbertson, each $80,000 making the sum total of $400,000.

Q. 308. That $80,000 added to the $100,000 made up by adding this balance of $99,300 and the $700, makes the $180,000 which you claim in your answer is the amount advanced to William Means?

A. Yes, sir. I don't think it is in my answer.

Q. 309. What is that $700 as shown by the entry on the journal?

A. It was for a check on the bank for $700.

Q. 310. Check given to William Means?

A. Yes, sir.

Q. 311. At that time, May 14th, 1884, William Means was given a check of $700, in order that his amount might be made to reach $180,000; that is correct, is it not?

A. The real purpose was to make the amount an even sum, $100,000, and get rid of odd dollars and cents in the account.

92 Q. 312. There was then, at that date, May, 1884, an equalization of all these accounts, so far as the several children were concerned was there not, to bring to each one the $180,000?

A. An equalization of the four children now living.

Q. 313. There is no entry made in this account of William Means on page 381 of the ledger subsequent to the entry of that check of $700, is there?

A. No; not in the advances account.

Q. 314. What was the date of the failure of the Metropolitan National bank?

A. It was in February, 1888. I cannot give the day.

Q. 315. It was just prior to the opening of these current accounts, was it not?

A. It was before them, a week or ten days I imagine. I do not recollect the date of the failure. I cannot give that.

Q. 316. Is it not true, Mr. Means, that that is what caused you to open these accounts current?

A. The failure of the bank?

Q. 317. Yes, sir; the probable involvement of your brother.

A. No.

Q. 318. That had nothing to do with it?

A. You refer to the probable involvement of my brother. In answer to that, I say no. The opening of the accounts was simply to separate the transactions following from what had been given; to keep the accounts straight.

Q. 319. Did William Means have no transactions at all with Thomas W. Means from May 14th, 1884, until February 13, 1888?

A. I don't know of any.

Q. 323. You gave him notes for money borrowed long before that, didn't you, that appear in your advances account?

A. Not any. I do not recollect any one before.

Q. 324. Do you mean to say that you never gave your father any note for any amount that appears in this advances account, as you style it?

A. I do not recollect any. There are probably hundreds of transactions there, backwards and forwards, that I cannot recollect how they were all settled.

Q. 325. Then do I understand you that from May, 1884, until February, 1888, you had no business transactions of any kind between yourself and your father except these two items of $400 and $225 that appear entered upon the book?

93 A. I collected for him and I paid for him during those times, but the transactions, as a business between us, in which I bought or sold, or thing of that kind, I think I had not, to amount to anything.

Q. 326. Prior to that time, Mr. Means, prior to 1884, when you collected money for him and paid it to him, it appears in this account to have been charged to you and you crediting with it?

A. Not always.

Q. 327. Isn't there a very large amount of your account made up of transactions of that character?

A. It is.

Q. 328. If some were entered, why not all entered?

A. If I collected where it was convenient to carry and deposit with a bank or some firm that he belonged to, I carried it there and had it entered to his credit and as an individual, was simply the agent for him, making no account needed between us.

Q. 329. That was true prior to 1884; as much so as it was subsequent to 1884, was it not?

A. No; not so much. He lived first at Union Landing, afterwards at Hanging Rock and then moved to Ashland. Part of that time I could not reach him unless by about a four hours' ride, or five. It was fifteen or twenty miles to him, and a river between us. Then it was necessary to charge and credit, but when his accounts were, as they were largely towards the last, in the Bank of Ashland, I checked in his name, or he checked, and made the entries on his books.

Q. 339. Could he see to distinguish one of his children?

A. Yes.

Q. 340. Are you certain in your recollection of that?

A. Yes. He could see, and wrote his name of that.

Q. 341. Wrote his name after that?

A. Yes, sir.

Q. 342. Didn't you write to William Means in February, 1888, that your father never would be able to see one of his children again unless an operation was performed on his eyes?

A. I possibly did, towards the last of the month. I cannot tell the date. Let me see the letter. That will give the date.

Q. 343. What was his mental condition at that time?

A. Well, his memory was poor and when he wanted to recollect anything that he felt that he wanted to speak to any one
94 about, he would recollect and mention it, but matters that were not of importance to him he would soon forget.

Q. 344. Wasn't he at that time utterly imbecile?

A. No.

Q. 345. Wasn't he then so far progressed with softening of the brain that he was utterly incapacitated to transact any business?

A. No.

Q. 346. Did he ever know of the failure of the Metropolitan bank?

A. Yes, sir.

Q. 347. Was he competent to realize?

A. Yes.

Q. 348. When did your father first commence exhibiting symptoms of failure of his mental powers?

Objected to as irrelevant to the issues raised in the case.

Q. 349. Mr. Means, I will ask you whether under date of February 20th, 1888, you did not write this to your brother William: "Father is growing more feeble and almost blind, has seen his children and friends for the last time unless an operation restores his sight again, John Means." Have you any recollection of having written to that effect?

A. I recollect of writing something.

Q. 350. I will ask you if that was his condition at that date, February 20th, 1888, according to your present recollection?

A. Let me see the paper, and I can tell better. That gives me better what was happening at that time.

Q. 351. I am asking now whether that is your present recollection as to his condition at that time?

A. I say I cannot fix the dates now.

Q. 352. Does that correspond with your present recollection of what I have read as to the condition of your father at that time?

A. It was, about that time. I cannot answer as to the certain day.

Q. 353. I asked you in the month of February. This is the 20th of February. Is that your recollection of his condition in February, 1888?

A. In the last of February; yes.

Q. 354. You can see the letter (hands same to witness); is that your signature?

A. That is my writing.

Q. 355. That is an original letter, is it not, from you to William?

95 A. Yes, sir; I think that is right.

Q. 356. That statement is correct, is it?

A. Yes.

Q. 357. Your father never saw a single entry upon this account current of William Means, did he?

A. No, sir.

Q. 358. I notice at the top of page 220 of the ledger, in the margin, is written this: "No interest shall be charged on this account on final settlement or any other time." In whose handwriting is that, Mr. Means?

A. I think that is James Bull's writing except signing of the name—that is my father's, Thomas W. Means. Bull was the book-keeper for Means, Kyle & Co.

Q. 359. At what date?

A. He was a book-keeper there in '69 and has been there ever since.

Q. 360. I notice the same entry made over each of the accounts in this ledger with his several children—yourself and the accounts of your sisters. Were those entries made there at the same time as to each account?

A. I presume not. The accounts were not opened at the same time.

Q. 361. Turn to the first page of your account, page 19 of the ledger.

A. No.

Q. 362. In whose handwriting is that?

A. That is my father's.

Q. 363. The entry?

A. The whole thing.

Q. 364. The whole thing is in your father's handwriting?

A. The whole thing.

Q. 365. When was that put there?

A. I can't tell; probably soon after the account was opened.

Q. 366. Do you know, have you any definite knowledge as to when it was put there?

A. No. It has been there a great many years.

Q. 367. Do you know at what date any of the signatures of Thomas W. Means to the memoranda over these various accounts as they appear in the books was made by him?

A. No, I cannot give the date. I did not see him write them. I do not know when it was done.

Q. 371. Why wasn't that balanced by crediting an amount sufficient to make the advances to the Culbertson heirs the one hundred and eighty thousand dollars as was done with the other accounts in May, 1884?

96 A. He had given her husband a quarter interest in one furnace, but he had never charged to her account. He was a partner in that furnace company himself and had furnished money to build a new furnace and to carry it on, thinking to the

advantage and benefit of himself and Culbertson, and he considered what he had lost in the operation would have been a legitimate charge against him if he had owned and would have made as much—that he had spent as much for that account as he had for the others. Then, too, he said it was only one Culbertson heir, one grandchild there, and he had other grandchildren—ten, I believe—that he would be in that looking past his own child, that that grandchild would have as much, about, as any one else.

Q. 372. He made no distinctions of that kind in his will, did he, as between his grandchildren?

Objected to, as the will speaks for itself.

Q. 373. He gave to his grandchild, the representative of Mrs. Culbertson, the full one-fifth, did he not?

A. Yes, sir.

Q. 374. Did Mr. Thomas W. Means ever give to you any property or interest in business that you are not charged with in these books?

A. He gave me five or six lots in Catlettsburg once. Those books will show the date. I think possibly I am charged a dollar. It may be a cent and it may be nothing. It was a gift to me.

Q. 375. Did he ever make a gift to you of any stocks or bonds or notes or money?

A. Not charged?

Q. 376. Yes.

A. No, I think not.

Q. 377. Except what is charged to you in this account?

A. I think nothing.

Q. 378. Did he make any gift to you or to any member of your family after 1885 and prior to his death?

A. I do not recollect anything.

Q. 379. Did he make any gift to any of his children after 1884 and prior to his death?

A. Well, I do not know what he did to the other children. There is nothing of moment to any one. It may have been a small present.

Q. 380. That I care nothing about. I mean important presents.

A. That is what I want understood.

97 Q. 381. What connection, Mr. Means, had your brother William with the venture in the Big Sandy Packet Company? I mean by that, was that a venture which he advised and caused your father to invest in?

A. I don't think he did. I do not know anything about it.

Q. 382. Do you know whether the investment was made, or upon whose inducement, in that packet company?

A. Did it to make money. Capt. Honshell and others induced him to go in.

Q. 389. Wasn't the business of Means, Kyle & Co. exceedingly profitable while managed by William Means?

A. Yes. It was profitable.

Q. 390. Was it not very largely profitable?

A. Yes.

Q. 391. Well, what business of the estate after that, except the sale of iron that you referred to, did William Means have charge of after he left the management of the business of Means, Kyle & Co.?

A. Of what estate?

Q. 392. Thomas W. Means' business.

A. I don't know that he managed anything for him particularly. We all did business for him as he would ask us. I don't think any of us ever refused him.

Q. 407. Have you brought with you the originals of the powers of attorney under which you acted or claimed to act during the lifetime of your father?

A. When?

Q. 408. Was there more than one executed to you?

A. He gave me once power of attorney. It was simply authority to sign checks at the Bank of Ashland—Ashland National bank.

Q. 409. When was that?

A. I can't tell. He would be at Ashland and tell me that there was something that he wanted done—something to look after, or he might send word to me, or write to me to do some business for him. I would sign the check for him "Thomas W. Means by John Means," and we were in the bank one day and I said to father, "You had better give a written authority for that. There might something happen to you or to me that there might be trouble with the settlement with the administrator or administrators or executors." I think that Hugh Means, my uncle, father's brother, I think he wrote the memorandum authorizing me to act and father signed it and it is filed away with the papers of the bank, as they were the ones who were interested. I probably have never seen it since.

98 Q. 410. That was long before he moved to Ashland, was it not, Mr. Means?

A. Yes, sir. I could not tell you the date. It might have been five years and it might have been ten.

Q. 411. What power of attorney have you brought with you?

A. It is executed in December, '87.

Q. 412. In December, '87 or '77?

A. '87.

Q. 413. Let me see it please.

Witness produces, in compliance with the request of counsel for complainant-, power of attorney endorsed "Lodged for record January 5th, 1888. Recorded in Deed Book 15, page 217.

Q. 414. Aren't you mistaken about the date?

A. (Looks at paper.) No, I am not mistaken.

Q. 415. This power, I think, is dated "thirty-first (31st) day of December, in the year of our Lord one thousand eight hundred and seventy-seven"?

A. Yes, sir.

Q. 416. When was it executed—signed by Thomas W. Means?

A. I think on the 31st day of December, 1887.

Q. 417. Why was it not signed for ten years after it was written?

A. It was signed probably on the day it was written.

Q. 418. Whose handwriting is it in?

A. Mine.

Q. 419. Do you mean to give the impression that you made a mistake and wrote seventy-seven when you meant eighty-seven?

A. I did.

Q. 420. Wrote it out in figures and in letters both?

A. I did, and sent it to the clerk.

Q. 421. "Thirty-first (31) day of December, in the year of our Lord" written out, "eighteen hundred and seventy-seven" and then in figures, "A. D. 1877" and that should have been eighty-seven (87). Is that correct?

A. That is what I meant. The gentlemen there witnessed his signing it. I thought we might need an authenticated copy to send abroad, then had it acknowledged so that it could be recorded.

Q. 422. Isn't this true, Mr. Means, that this was executed, signed by Thomas W. Means, in '77?

A. No, sir.

99 Q. 423. In '87 you wanted it acknowledged, and you then had it witnessed and acknowledged and recorded?

A. No; that is not true. I did not know I had made the error until the clerk who recorded it called my attention to it.

Q. 424. Did you have any power of attorney prior to January, 1888—prior to this one?

A. The one I mentioned, authorizing to sign checks; I could hardly define it to be a power of attorney; in fact, a power of attorney for that purpose, and no more.

Q. 425. A power authorizing you to sign checks?

A. Checks on that particular bank. I don't think—I may have had one to sign for the Second National at Ironton, but I do not recollect. I don't recollect whether I ever sent a check there.

Q. 426. Did you ever have any other than those?

A. I have no recollections of any.

Q. 427. It is true, is it not, Mr. Means, that you are a very careful man in all your business matters, and all your writings and entries, and have been all your life?

A. I think so.

Q. 428. You do not recollect any other instance of your having made a mistake of writing out a difference in date of ten years of a paper, than this one?

A. No, I do not.

Q. 429. This is the isolated instance, is it?

A. That is. I will state this. I wrote that. The gentlemen who witnessed that were sitting there. I asked them to witness the paper. They saw—one man might have seen me, and they heard me read it to them, and I asked them to witness the signing, and one of them asked me "Let us look at it," and he took it and read it. They did not notice the difference in the date, or at least if they did, they did not call my attention to it until it went to the clerk. The man before whom the acknowledgement was taken, he made a mistake. He wrote January, '87, in place of '88. It shows there

where he altered it, and it was brought back. I got him to alter it before it was recorded. The clerk there brought it or sent it to me, and when he spoke of that I thought it was the only error, and then I noticed the error in the year.

Q. 430. You did not even then notice the error in this year?

A. No. I thought the error he referred to was in the acknowledgment.

Paper offered in evidence, copy of which is hereto attached marked Exhibit 1. (See next page.)

100 Know all men by these presents, that I, Thomas W. Means, of Ashland, Boyd county, Kentucky, hereby constitute and empower John Means, of Ashland, as my attorney-in-fact for me and in my name to receive money, sign checks, notes, drafts and bills of exchange, to endorse notes, checks, drafts and bills of exchange payable to me on my order, to buy, sell and transfer notes, bonds, stocks, bills of exchange, drafts and checks, hereby allowing, ratifying and confirming whatever said John Means, attorney-in-fact for me and in my name, may do by virtue of this authority.

In testimony whereof, I have hereunto set my hand this thirty-first (31) day of December, in the year of our Lord, eighteen hundred and seventy-seven (A. D. 1887).

(Signed) THOMAS W. MEANS.

Witnesses:
JOHN M. BURNS.
JOHN RUSSELL.

STATE OF KENTUCKY, }
Boyd County. }

Personally appeared before me the undersigned, a notary public in and for aforesaid county and State, Thomas W. Means who acknowledged the foregoing instrument of writing to be his act and deed for the purposes mentioned herein.

Given under my hand and seal of office, this the 4th day of January, 1888.

[NOTARY SEAL.] M. H. HOUSTON,
Notary Public, Boyd Co., Ky.

STATE OF KENTUCKY, } *sct:*
County of Boyd, }

I, J. H. Poage, clerk of Boyd county court, Kentucky, do hereby certify that the foregoing power of attorney from Thomas W. Means to John Means was this day lodged in my office for record, whereupon the same, together with the foregoing and this certificate had been duly recorded in my office.

Given under my hand this 5th day of January, 1888.

J. H. POAGE, *C. B. C. C.*

101 Endorsed as follows:

Thomas W. Means' power of attorney to John Means. Lodged for record Jan. 5, 1888. Recorded in Deed Book No. 15, page 217.

Testimony of John Means Continued.

FRIDAY, *December* 23, 1892—2.30 p. m.

Q. 434. Prior to 1884, did you ever make any purchases from, or sales to, your father, except such as appear in the books to which your attention has been called—the books here present?

A. I think not.

Q. 435. Subsequent to 1884, did you make any sale to, or transfer, to your father of any property or stocks?

A. I think nothing except what is on his books. I have no recollection of any.

Q. 437. I wish to call your attention to this allegation in the answer filed, which is the joint answer of Thomas M. Adams and E. C. Means, administrators with the will annexed of Thomas W. Means, deceased. It reads: "That said testator for a number of years before his death was feeble in body to such an extent that it would have overtaxed his strength to look after the details of his extensive business, and his son, John Means, actuated by filial affection and duty, and a proper regard for the interest of all concerned under a power of attorney constituting him agent and attorney-in-fact, executed by said testator, and requested by said Thomas W. Means so to do, looked after the details of the larger part of his father's business, and in the last three or four years of his life, when, as was well known to all of his said children, he had, by reason of great age and consequent infirmities, become and was in need of assistance in attention to details of his business, said John Means, with the full knowledge, acquiescence, assent and approval, as these respondents are informed and believe, of said William Means and of all of said testator's children, continued to look after his father's business as before as agent and attorney-in-fact under said power of attorney." Is that true as therein stated?

A. No, I think not. They did not know of the error in the date that was made. I had forgotten all about it and had not called their attention to it. I never saw that answer until since I came here. It was handed to me yesterday.

102 Q. 438. When did you discover the error of date in the power of attorney?

A. It was after I sent it to the clerk for record. In Kentucky the county clerk is recorder. I sent it for record. He mentioned the error in date. I thought he referred to the error in date of the acknowledgment.

Q. 442. When your answer was drawn and sworn to in this case, were you not then under the same impression as to the date of the power of attorney?

A. No. I knew then, some time within a month of the record, but I had not thought about it since and it didn't come to my mind until I saw the power of attorney. It was brought among the papers that were asked for down here, then I recollected about the circumstance.

Q. 443. This statement is made in your answer, to which I will call your attention:

"This defendant admits that he acted for several years before the death of Thomas W. Means under and in pursuance of a power of attorney executed by Thomas W. Means, assisting his said father in transacting the details of his extensive business, and that, as his father grew older, he gave more minute attention to his business affairs; but all this was done at the request of said Thomas W. Means, and with the knowledge, assent and approval of all the children of said Thomas W. Means, and as agent and attorney, under the power aforesaid. And from the time the said Thomas W. Means became incompetent to manage his business according to a fixed purpose of his own, the dealings of this defendant therewith were mainly confined to the duty of collecting and preserving the rents, and other incomes of the said estate, which duty this defendant avers was performed with fidelity in all respects and to the best interest of all concerned therein."

Now, do I understand you that that allegation, as made there, that several years before the death of Thomas W. Means refers to the short time intervening between 1887 and his death?

A. That allegation—I had in my mind, thinking of the time I did business more than of the date of the power of attorney. That was not in my mind; it was the time of the business.

Q. 447. I do not refer to the volume of business, but I refer to the proportion of business that you transacted for your father—the proportion of his business. You transacted all his business, did you not? In '87 you transacted all his business, didn't you?

103 A. Oh, I kept the accounts for him and would advise with him about it. Nearly everything I did for him I would talk with him before I did it. Sometimes there would be something I thought was to his interest to do, I did it and told him afterwards and it was a sort of joint matter. I was the active man. I traveled for him. He did not go away from home for some years.

Q. 448. Did you not as fully transact his business in the year 1886 as you did in 1887? I do not mean to ask you whether there was more business to be done in 1887 than in 1886, but didn't you as fully transact his business, what there was of it?

A. The amount done by me, I think, grew with his age—the proportion of it.

Q. 454. Now, you say in this allegation in this case, "From the time said Thomas W. Means became incompetent to manage his business according to a fixed purpose of his own." When do you locate that time, Mr. Means?

A. I should fix that along in '89—during the summer of 1889. It is pretty difficult to determine just the day.

Q. 455. Then do we understand you to testify that in your judgment your father was fully competent to transact business and to manage his business until the spring or summer of 1889? Is that what you desire us to understand?

A. I think yes. He was familiar with his business operations and kind of business. I would tell him "Some one wants to buy some-

thing, or wants to sell something, to you." He would understand that and would make answer what he would do. He would answer me to write letters, to pay accounts for him, and he didn't undertake, if any one had gone to him about business, he would not have undertaken to have done anything without me, or if my brother had been there, I think he would have consulted him and probably been governed by his advice. He had full faith in us in that way.

Q. 475. Mr. Means, recurring to the investment in the Big Sandy Packet Company to which you have testified, it is correct, and the books show, that at the time of the formation of the partnership or joint stock company, you received a tenth interest in $40,000 of capital for the $1,200 that your father paid for you as heretofore testified; or, in other words, as stated more correctly, the company was then formed on the basis of a capital of $40,000, that you subscribed for $4,000, thirty per cent. was called, which your father
104 paid, of twelve hundred dollars and that no subsequent calls were ever made by the company upon you on account of that subscription of four thousand dollars?

A. I did become a partner for the one-tenth in the company and he paid twelve hundred dollars for me and no further call was made in that partnership company.

Q. 476. When was the partnership changed to a corporation?

A. To the best of my recollection, between October of '66 and December of '66; somewhere about that time.

Q. 477. What amount of stock was issued to you by the incorporation of the company in the new company?

A. At the time of the change I received a hundred and eighty shares in the Cincinnati, Big Sandy and Pomeroy Packet Company, being eighteen thousand dollars, and paid one hundred dollars in cash at the time. There is a point that I am not clear about at all, whether I paid that into the company or paid somebody else. A settlement was made at the time and I don't know how it was done. It would be hard to find the company's books now, to establish that. My belief is that it was for profits, sixteen thousand seven hundred dollars; that, with the twelve hundred and one hundred, made the eighteen thousand dollars.

Q. 478. At the time of the formation of the company your father subscribed for four thousand dollars of the twelve thousand dollars capital stock for himself and four thousand for you; is that correct?

A. The fact was, his subscription was for nine thousand dollars in his own name and my subscription was for four thousand dollars.

Q. 479. Was not a part, five thousand dollars of the nine thousand dollars, intended for John Kyle and was it not subsequently taken by John Kyle?

A. It was intended for Kyle and taken by him.

Q. 480. Was any of the interest in the partnership of the Cincinnati and Big Sandy Packet Company ever transferred to William Means prior to the incorporation?

A. I think not. I think none of it was, in the partnership.

Q. 481. Was any of the stock of the Cincinnati, Portsmouth, Big

Sandy and Pomeroy Packet Company ever transferred to William Means, and if so, when was the first transfer made?

A. Father transferred to William Means sixty-three shares on the twenty-eighth of April, 1881.

Q. 482. For what amount was William Means then charged for that sixty-three shares?

105 A. Sixty-three hundred dollars.

Q. 486. In whose handwriting is the entry upon the books charging William Means, the original entry in Journal B, with sixty-three hundred dollars, the sixty-three shares of that stock?

A. Mine.

Q. 488. If Mr. Means thinks there is a word or two left out what word or two is it that he thinks there is left out?

A. My answer was, as I recollect, and as I intended it, that sometimes he, in speaking of this, he looked past his children to his grandchildren. He sometimes might make, I think, some difference there as he is got it down and the other.

Q. 489. Please look at that portion of the answer and indicate to us where you would put the word "sometimes."

(Transcript of testimony shown to witness)

A. My idea was this. I cannot get it in just in that answer as it is here. Your question implies that the statement was only at that time, but I mean by sometimes, that he often spoke in that way as though he was looking to the *the* final ending, looking at the grandchildren, the difference in our families.

Q. 490. Looking to the final distribution between the grandchildren, do you mean?

A. No. He did not look to the distribution between the grandchildren excepting that one grandchild. That was the only one then which would receive of itself, but in his speaking of leaving to his children he would often refer to the difference in the size of our family.

Q. 494. Now please answer the question. Who were the ten grandchildren to whom you referred?

A. I have six, William three, Mrs. Adams one, makes the ten; and Culbertson one, made eleven.

Q. 495. Let us understand this matter clearly. Do I understand you that your father at that time or sometimes or any time gave the idea that he looked to William Means' three children, three daughters, receiving three times as much from his estate that Thomas Adams, the only son of Mrs. Adams, would receive, or young Thomas Culbertson, the only son of Mrs. Culbertson, would receive?

A. He did not propose to make them receive as indicated in the question, but he gave as a reason why he did not make the Culbertson interest or devise as much as to his other heirs, was the advance he had made to his son-in-law in the business. I mean by

106 that the devise with what he had given or advanced before her death and the draft of the will.

Q. 496. Now, Mr. Means, what amount was it that was lost to

Thomas W. Means by Mr. Culbertson through the furnace to which you have referred? I believe it was the Princess furnace, was it not?

A. It was the Princess furnace and Buena Vista. The balance against the firm of Culbertson, Means and Culbertson shows to be one hundred and sixty-nine thousand and sixty-seven dollars and thirty-one cents on his book, ledger, page 333.

Q. 497. Give us the date of that, please?

A. The date of the last entry is twenty-first of June, 1881.

Q. 498. What is the date of the balance?

A. The date of the balance would be the last entry.

Q. 499. The balance was struck on that account in September, 1880, was it not?

A. Yes, September 1st, 1880.

Q. 500. Showing them a debit of about one hundred and sixty-nine thousand dollars?

A. Yes, sir.

Q. 501. Does that show the entire loss?

A. That shows more than the loss.

Q. 502. How much more than the loss? What was the loss?

A. I cannot tell exactly.

Q. 503. Approximate it as nearly as you can?

A. Well, I cannot answer. It would be guesswork. But I think it was over a hundred thousand dollars—the loss.

Q. 504. Now you say in the same answer to which I call your attention heretofore, the answer to question 371, "He had given her husband a quarter interest in one furnace and he had never charged to her account." What furnace was that?

A. This Princess and Buena Vista.

Q. 505. "He was a partner in that furnace himself and had furnished money to build a new furnace and to carry it on and thinking it to the advantage of himself and Culbertson and he considered what he had lost in the venture would have been a legitimate charge against him if he had owned and would have made as much—that he had spent as much for that as he had for the other." Now, is that the amount that you there refer to in that answer?

A. This account and the quarter interest.

Q. 506. Under whose management was that venture?

107 A. Captain W. W. Culbertson, the husband of my sister.

Q. 507. At the time that that account was balanced in August or September of 1880 how many children had W. W. Culbertson?

A. One.

Q. 508. What was the balance against that firm in February, 1880?

A. One hundred and forty-eight thousand four hundred and one dollars and five cents.

Q. 509. What was the balance of that account on the twelfth of April, 1879, against the account?

A. Their account was not balanced on that day on his books.

Q. 510. Whose handwriting is the memorandum on page 382 of the ledger in red ink?

A. It is mine.

Q. 511. And the first item is "See their account rendered twelfth of April, 1879, balance due T. W. M."—that means Thomas W. Means—"71,871.63," is it not?

A. Yes, sir. That is an explanation.

Q. 512. They had rendered an account of that date showing that debit, had they not?

A. Yes, sir.

Q. 513. The losses in fact had all been incurred prior to that date, had they not, and the subsequent entries which increased the amount were simply made as Mr. Means paid the incurred obligations?

A. I think the furnace had been stopped at that time and the losses in running it made already.

Q. 514. Was any portion of that loss at that time or any subsequent time, charged to Mrs. Culbertson upon the books of Thomas W. Means?

A. On the 2nd of July, 1879, was a charge against her account, twenty-seven thousand six hundred and eighty-three dollars and twenty-one cents.

Q. 515. Please read the journal entry of that charge on page 86 of Journal B, referring to page 280 of the ledger to which you have just referred?

A. "Mrs Jane Culbertson for various items in account of Means & Co. paid on her house in Ashland for construction and for improvement of the grounds $27,683.21. N. B. These are found in memo. by Thomas M. Adams copied from books of Means & Co. and entered by order of Thomas W. Means this day. John Means."

Q. 516. What was the firm of Means & Co. to which this note refers?

108 A. Thomas W. Means and W. W. Culbertson. I am not sure whether Hugh Means was in it or not.

Q. 517. Then Mrs. Culbertson is here charged with the amount which she drew out of the firm of Means & Co. paid on her house in Ashland for construction and for improvements on the grounds? Is that correct?

A. That is correct. My recollection is that these amounts are charged on the books of Means & Co.; charged to Thomas W. Means, but the account not rendered to him until this time, when we took off those books.

Q. 518. When was this entry made?

A. Second of July, 1879.

Q. 519. When did Mrs. Culbertson die?

A. She died in '74. I think in September of '74.

Q. 520. Have you, or is it in existence, the memoranda made by Thomas M. Adams referred to in this note appended to this entry?

A. I have not the memoranda. It was among father's papers—I presume is there still.

Q. 521. In the possession of the administrators?

A. I suppose they have them. If the papers were taken and left

at my father's house, he probably would not have taken care of them.

Q. 522. What charge in addition to this, is made to Mrs. Culbertson on account of that loss?

A. No other charge, and this is not made on account of that loss.

Q. 523. I call your attention to page 2 of the answer filed by the administrators in this action, and ask you to point out where, upon the books, is found the amounts there stated as having been advanced, the statement being, in the answer: "That at the date of the execution of said will, July 20, 1880, said Thomas W. Means had made advancements to his children respectively that were charged on his books amounting as follows: 1st, to John Means $79,314.36 and $80,000." Now, where on the books do you find the $79,314.36 and the $80,000?

A. I will answer as to the ledger, pages 19 and 281, the postings on the ledger referring back to the various journals and entries which are made in the account. To give all the items it would take the drawing off of the whole accounts on those pages, beginning in January, 1855, up to July 6th, 1880.

Q. 524. Is there, upon either of those pages, any amount of $79,314.36 advanced to you?

A. In one amount?

Q. 525. Yes.

109 A. No, sir. I say it includes all the account to get the two amounts given there.

Q. 527. At the time of your father's death was this account of yours balanced as of the date of July 20, 1880?

A. No, sir. I find a balance by taking the difference between the charges and the credits on the 6th of July, 1880, which is the nearest date before the 20th. I just now found the difference. When the executors found the difference, I do not know, but I presume about the time the answer was drawn.

Q. 528. Then, if I understand you, this amount of $79,314.36 is made up by adding the account of all transactions between yourself and your father prior to July 16, 1880, and balancing that account as of that date, and it showed a debit balance from you to Thomas W. Means of $79,314.36; is that correct?

A. That is correct, I think.

Q. 529. Where do you get the item of $80,000?

A. That is included in this account between January, '55, and up to July of '80.

Q. 530. Is that the $80,000 of credit which your father gave to your account by the entry when he directed a credit as shown on page 4 of Journal B?

A. The entry at that time was made to reduce the balances against myself and the others credited.

Q. 531. The question is, is this the $80,000 which appears here as part of the answer?

A. The entry on page 4 is a credit and not a debit.

Q. 532. Now answer me. Is that the eighty thousand dollars referred to in this answer?

A. I get the eighty thousand dollars from the debits of the account. I was not charged with eighty thousand dollars then, at the time of that credit. I was charged at the time of that credit—had been charged with more than eighty thousand dollars, and the eighty thousand dollars was credited and the balance remaining carried forward as a charge against me.

Q. 533. Mr. Means, this $79,314.36 is the debit balance of your account after a credit of eighty thousand dollars as shown by page 4 of Journal B and the eighty thousand dollars referred to is the eighty thousand dollars there credited; that is correct, is it?

A. That is correct.

Q. 534. The second item of the answer: "To William Means $58,409.54 and $80,000" is made up in the same manner, is it?

A. I presume so.

110 Q. 535. And the same is true in regard to the amounts "Mary Ann Adams, $51,247.48 and $80,000" and "Margaret A. Means, $44,441.35 and $80,000" and "Sarah J. Culbertson, $29,609.82 and $80,000"?

A. I suppose they are made in the same way. I have not taken the pains to go over the figures and see whether they are correct. They are all taken off the books.

Q. 536. Then follows: "and afterwards made advances to them respectively, all of which were charged upon his books amounting as follows: To John Means, $20,685.64." Now, there isn't any such amount as that in one sum appears charged on the books to you, is there, Mr. Means, since the execution of the will?

A. No, sir.

Q. 537. Then is it true that this twenty thousand six hundred and eighty-five dollars and sixty-four cents is made up by taking the items that appear in the account of yours to which I have referred that were entered after July 6, 1880, both debit and credit and striking a balance there appears from those items a debit balance of $20,685.64; is that correct, and is that the way that amount is ascertained?

A. That is made in that way, by taking the difference between the debits and credits.

Q. 538. The same is true as to the others—William Means, Mary Ann Adams and Margaret A.?

A. I suppose it was, without reckoning as to those.

Q. 539. And no balance appears struck as to Sarah Jane Culbertson after the date of the will?

A. No. No balance struck after the date of the will.

Recess until 2 p. m.

WEDNESDAY, *December* 28, 1892—2 p. m.

Q. 540. Mr. Means, turn to the beginning of your account on page 19 of the ledger, the first item on the debit side is January 22, 1855, to Sinton & Means, $50, and the first item on the credit side is "February 7, by cash $220." Turn to the journal, page 6, and see what that is for?

A. $220 in cash.

Q. 541. For this amount on account, the credit reads, doesn't it?

A. Yes, sir; that is crediting me with that amount.

Q. 542. On account of what? If this is the beginning of your account and shows only a debit of $50—on what account is that credit?

111 A. It is on my account. I do not know what it is for—that is, I do not know what I gave him the money for. I have no recollection of the transaction at all.

Q. 543. Wouldn't that indicate that there must have been some prior account?

A. No, I think not. Then he had made no advance to me at that time. He gave me nothing unless it might have been traveling about or something, when I was a schoolboy. I haven't any recollection of the transaction at all. It is on account, the same as if I got fifty dollars of him, he would have charged it on account against me, or $220.

Q. 544. What I cannot understand about the matter is, the books showing that you owed him at that time but $50, how you could pay him $220 on account.

A. Suppose I had had a thousand dollars and preferred to leave it with him to keep it instead of myself. I think the charges following may give some explanation of it. I have no recollection of the transaction whatever. I know no more about it than you do, so far as my recollection goes now. That entry is by the man that was the book-keeper of Sinton & Means at the time—Mr. Fletcher.

Q. 545. Mr. Means, you have testified with regard to a subscription to twenty-five thousand dollars of stock—the first advancement, I believe, that you claimed was made to you and which proved to be a losing investment and your father took it off from your hands. Was there any subsequent transaction of that kind where investments proved unprofitable and your father took them off of your hands? I will correct the question in so far as to leave out the statement as to its being the first advance, and let it relate to the K. I. C. & M. Co. stock. I mean as to that being the investment which you have testified to was a bad stock and your father took it off your hands at cost because it was bad?

A. I do not now recollect of his taking any other stock off of me or from me for that reason.

Q. 546. What is this charge of March 7, Dugan, Means, Hall & Co., on the journal, $2,115?

A. That is a charge to pay for $2,000 in the Bank of Ashland, and $15 premium on the draft. I suppose the fifteen dollars meant for gold premium. Probably the stock was payable in gold or Eastern exchange.

Q. 547. What interest did your father have in the banking-house of Dugan, Means, Hall & Co.?

A. I will have to answer that from his own books. I was
112 not a member of the firm at that time. I find the first charge on his books is for "10 per cent. paid on my ten shares bank stock on call of five per cent. 500." I think, and the charge

indicates, that it should be a ten per cent. call in place of the word "five."

Q. 548. The date of that is March, '55?

A. Yes, sir, March 1st.

Q. 549. That was a partnership and not an incorporated company, wasn't it?

A. It was a partnership.

Q. 550. William Means was interested in that partnership to the extent of five thousand dollars?

A. Yes, sir; $5,000.

Q. 551. Were you ever at any time interested in that banking-house?

A. I did become interested. September 5, 1860, I bought of Hugh Means five shares of stock, being five thousand dollars, paid him premium on the same, one thousand dollars, less a dividend of seven hundred and fifty dollars which came to me, leaving a balance of two hundred and fifty dollars of premium.

Q. 552. Does that purchase appear in your account in Thomas W. Means' books?

A. That purchase does not, no. It has nothing to do with that, only he advised me to make the purchase. Hugh Means owed me some and wanted to settle with me in that way, and I did.

Q. 553. How long did you continue to hold that interest?

A. Until the 27th of February, 1862.

Q. 554. To whom was it then transferred?

A. Transferred then to Thomas W. Means, my father.

Q. 555. At what price?

A. At the same price that I paid; that is, par value of five thousand dollars and premium a thousand. That is entered on these books—journal page 238, under date of thirtieth of June, 1862. Entered by my father in his own handwriting.

Q. 556. At that date wasn't that banking firm then deeply involved by reason of having loaned very largely to the distiller George Davis who was then unable to pay them?

A. Yes, sir, it was. It had been before that time.

Q. 557. Did not, at the same time, and on the same page, 238 of Journal A, your father immediately charge the premium up to profit and loss?

A. That don't show that it was a loss.

113 Q. 558. The entry then made by your father is "profit and loss to John Means for premium on Portsmouth National bank stock, $1,000." That is the entry he then made?

A. He made that entry.

Q. 559. Immediately succeeding the one you have just spoken about?

A. Yes, sir.

Q. 575. After William Means' interest in Means, Kyle & Co. was purchased by your father, did you become a purchaser or in any manner acquire a portion of that interest?

A. No, sir; I did not.

Q. 576. Mr. Means, was your intimate relations with your father

and influence with and over him a matter that caused jealousy on the part of your brother William Means to any extent?

A. I think it was, about the time he went out of the company.

Q. 577. Has there not been some estrangement between you originating in that cause?

A. After the sale in '69 of his interest in Means, Kyle & Co., we agreed that we would not try to do business together. We did not agree about the manner of doing business and the choice of men to do the business for us or with us, and if we were not connected with the management of a business it would not interfere with our personal relations, and he always treated me friendly after that and I felt so to him.

Q. 578. Did he not complain of your influence with and over your father?

A. He did not to me. I mean after that time. He had some feeling at that time.

Q. 579. Wasn't there always some feeling on that score prior to that time?

A. No, I think not. We never had any serious difference that I recollect now.

Q. 605. As I remember, you have testified that Thomas W. Means kept a bill book. If I am correct where is that book?

A. I don't know.

Q. 606. Was it turned over by you to the committeemen?

A. The books were all left in my office and I suppose the committeemen has everything. If he has not got that book I suppose it is there yet.

Q. 649. Where did you make the payment of one hundred and twenty-five thousand dollars?

114 A. To McConville at the Metropolitan Bank building or where the bank had been. McConville was receiver.

Q. 650. Did you not make that payment without the knowledge of William Means at the time it was made?

A. No. He knew I was going to pay it and knew I was here for that purpose.

Q. 651. Did not William Means protest against the payment being made at the time?

A. No, he did not.

Q. 652. Did not William Means afterwards complain to you that the payment was a mistake?

A. He did tell me that he had been advised by some attorneys that it was a mistake to pay, he ought to have held on to the money. But I told him that I could pay it and that when I would be back and make the payment after seeing father and seeing that he would.

Q. 653. Where did you get the money with which to make that payment of one hundred and twenty-five thousand dollars—from whom?

A. It was my father—his money.

Q. 654. Did you not borrow the money from Henry Hanna, or some portion of it?

A. I borrowed a portion of it, giving father's notes; a portion from Mr. Hanna, from Mr. Sinton, and gave them his notes drawn by me as his attorney, explained to him how we would do and knew how we could raise the money out of bonds that he had and some that he borrowed—some money—up there.

Q. 655. What was the amount that you borrowed from Henry Hanna?

A. Fifty thousand dollars.

Q. 656. What was the amount you borrowed from Mr. Sinton?

A. Fifty thousand dollars.

Q. 662. Wasn't the note to David Sinton your personal note?

A. No, sir.

Q. 666. Was it not William Means' judgment to not pay the one hundred and twenty-five thousand dollars to the bank until the question of his prosecution or the claims of the Government against him were settled?

A. He did not express any such judgment to me before nor at the time of payment.

Q. 667. Has he since that time so expressed himself?

Objected to as irrelevant.

A. He told me more than a month afterwards when I saw him at home at his own house that it was a mistake, that he had
115 not been obliged, that it was a mistake and that we ought to have held on to all the money.

Q. 668. Mr. Means, did you not personally in the first instance pay the one hundred and twenty-five thousand dollars by borrowing the money and making the payment to the bank?

A. Out of my own money?

Q. 669. Out of money that you borrowed?

A. I borrowed for my father and paid for it in his name and with his consent and knowledge and not out of my individual money excepting a small amount which was not made up by the hundred thousand from Sinton and Hanna and some other proceeds. I cannot give the exact amount. I made my own draft for thirteen hundred and thirty-nine dollars and forty-nine cents to make up the amount, and that was paid to me after I went home.

Q. 670. Mr. Means, do you remember visiting your brother at the time when you informed him of an offer to pay seventy-five thousand dollars to the bank upon a suggestion of a dismissal of the suit and pardon? Do you remember that circumstance of seeing him and suggesting that matter to him?

A. Yes, sir; I remember it.

Q. 671. Is this statement true, which I read from a letter of William Means referring to that time and place: "I have been unable to conceal my disgust at the conduct of my affair including the first payment to the bank and he is hurt of course (referring to you) but it cannot be helped." Is that correct?

A. Let me see the paper.

Q. 672. The entire sentence is: "I have asked Brother John about money and am assured that it will be provided, but I have been

unable to conceal my disgust at the conduct of my affairs including the first payment to the bank and he is hurt of course but it cannot be helped. I have been a silent victim, etc." Now, did any such interview as that occur between you and your brother at that time and place? Did he then express to you his disgust at the first payment and any other management of his affairs by you?

A. No, sir; he did not make any such complaint.

Q. 673. Is this statement correct: "Brother John is here, Friday, and informs me of an offer to pay seventy-five thousand dollars more to the bank for the promise of the dismissal of the suit and a pardon from the President. I have told him to cancel this arrangement at once and that too much money has been paid already and that I propose to stand trial." I was reading to you from
116 the letter of Thursday, November eighth of William Means to his daughter?

A. That is not true.

Q. 674. At the time of the conversation that I have called your attention to, when you say you did converse with William Means about that matter about the said payment of the seventy-five thousand dollars, what did William Means say?

A. About that matter?

Q. 675. Yes, sir.

A. I cannot pretend to repeat all that was said between him and myself. At that time he executed his note to my father for seventy-five thousand dollars and reciting, separately from the note—attached to the sheet probably—some sheet—that it was to be considered as a part of his advancement in the distribution of the estate, and so on.

Q. 676. Where was that done?

A. It was in New Haven, Connecticut. He was just in the suburbs but that was the post-office.

Q. 677. He did not at all object then to doing it?

A. I have no recollection of his making any objection to doing it.

Q. 678. He did not then at all reflect upon the payments of the hundred and twenty-five thousand dollars to the bank at that time?

A. No.

Q. 679. Why did you go to New Haven at that time to see him in regard to this matter?

A. Well, while I was here negotiating with McConville, the agent of the stockholders of the bank, Judge Sage ordered the bond to be increased from fifty thousand to one hundred thousand dollars. I took a blank bond from the clerk here, General Cowen, and came into this building to see Judge Sage about how it should be executed. He said that William Means' signature was known to them and that would be sufficient. That was one of the moving things to hurry me to get that bond, and I took this note at the same time, and we executed some other papers.

Q. 680. And you then informed William Means, did you, of this suggestion of the payment of seventy-five thousand dollars?

A. I did.

Q. 681. After this hundred and twenty-five thousand dollars was

paid, that constituted Mr. William Means's individual debt to the bank, did it not?

A. That was his individual debt, and interest.

117 Q. 682. To the bank?

A. Yes, sir, as they made the statement on that day, the fifteenth of February.

Q. 683. Didn't you write to Mrs. William Means, as late as March, 1889, that you paid this money at that time hoping that the matter would end there?

A. I do not recollect of writing to her, but it is probable I may have done so. I did hope that there would be no indictment when I made the payment. That was the reason that I made it.

Q. 686. Why would you say that you paid it personally?

A. Why would I say I paid it personally?

Q. 688. You did not say either that your father paid it?

A. No. Father was not here. I was here and she was here and I promised to pay it or told him that I will try to.

Q. 689. Was the note of William Means first taken to you?

A. No, sir; never was taken to me.

Q. 693. Was there a suggestion of an adjustment upon the basis of payment of seventy-five thousand dollars to the Government at any time?

A. No, sir; no suggestion of any payment to the Government.

Q. 694. To whom was the seventy-five thousand dollars to be paid?

A. It was to be paid on William Means's liabilities to the Metropolitan National bank—to be applied on those liabilities.

Q. 695. What liabilities?

A. William Means' liabilities that were still unsettled with the bank.

Q. 700. Was a deposit made of the seventy-five thousand dollars by you with any one and in what form?

A. Deposited with James McConville individually in a certified check on the Citizens' National bank and fifty-thousand-dollar draft on David Sinton and accepted by him which McConville accepted as cash.

Q. 703. What became of that draft and of that check; were they paid or were they returned to you?

A. The check was paid. McConville cashed the check and the draft, the acceptance, McConville returned to me and I sent to Mr. Sinton and he paid the fifty thousand dollars back.

Q. 705. What became of the seventy-five-thousand-dollar note of William Means?

118 A. The seventy-five thousand dollars which I received was credited on his note to father. The seventy-five thousand dollars was returned.

Q. 706. On what note?

A. His note for seventy-five thousand dollars which was given at the time I saw him in New Haven, for this money.

Q. 707. Have you that note?

A. I have not.

Q. 708. Is it in the possession of the administrators?

A. I suppose it is. It was among my father's papers when I left them—oh, William's note.

Q. 710. What securities were transferred by William Means to you with authority to you to sell them, and when were they transferred after the failure of the bank. My question is intended to include all stocks and property of William Means that came into your hands after the failure of the bank with power to sell and dispose of it?

A. I don't know whether I can give them all from memory.

Q. 711. Haven't you a list of them in your possession?

A. Yes.

Q. 712. Can you produce the list? Have recourse to the list and refresh your recollection?

A. The receiver handed me certificates. My recollection is, two hundred and twenty-three shares in the Metropolitan National bank; three hundred and twenty shares of Distillers' and Cattle Feeders' Trust. I believe is what they call it—a whiskey trust—par value was one-hundred-dollar shares; Roan Mountain Steel and Iron Company, fifty thousand dollars. That would be five hundred shares. Ashland National Bank stock, thirty-five shares of one hundred dollars, thirty-five hundred dollars. Means, Kyle & Company, ten shares of one thousand dollars each, ten thousand dollars. Mt. Auburn cable railway—I think that is the title of the company—bonds, two bonds one thousand dollars each, two thousand dollars. Athens, Tennessee, Manufacturing Company, sixteen thousand dollars par value; I don't know the value of the shares. There was receipts for payments in Covington transfer railway—two receipts for five hundred dollars each. Two receipts for payments on subscription to capital stock of the Manufacturers' Land and Improvement Company of Covington, Kentucky, one for two thousand dollars and one for two hundred and fifty dollars. A mortgage on some real estate in Toledo. I think the mortgage was stated to the bank as being ten thousand dollars. My recollection is that it was a mort-
119 gage on the property and that it recited as nominally for ten thousand dollars, but I might be mistaken about that. It might be seven thousand dollars as he has got it here but he could just as well have mortgaged it for a hundred thousand dollars The property was worth so much. There were shares in the Telico—I am not sure whether it was manufacturing company—the par value was five thousand dollars, and there was a mortgage on an interest in some lands in Findlay. My impression is, and recollection, that that was to secure sum named—ten thousand dollars. This memorandum here shows it fifteen thousand dollars. There was sixty-three shares Cincinnati, Big Sandy, Portsmouth and Pomeroy Packet Company, sixty-three hundred dollars. Thirty shares Mt. Auburn Cable Railway Company. I don't know what the par value is. Nine shares of Norton Iron Works stock, nine thousand dollars. This is answering so far as what I received from the McConville as receiver. There were receipts from William direct; two hundred

shares of the Kentucky Iron, Coal and Manufacturing Company; sixty-nine shares in the Cincinnati, Big Sandy, Portsmouth and Pomeroy Packet Company, sixty-nine hundred dollars. And I think there was four hundred and twenty-three shares of Roan Mountain Steel and Iron Company.

Q. 784. What securities were turned over by William Means to you claimed by him to belong to the Labrot Trust?

Objected to as having nothing to do with the case.

A. Mortgage note of Frank Huntington, ten thousand dollars; ten bonds of the Lexington & Big Sandy railroad, Eastern division, now known as the Ashland Coal and Iron Railway Company—of one thousand dollars each, making ten thousand dollars for the bonds. That is all.

Q. 785. What disposition was made by you of those securities?

Objected to because it has nothing to do with the estate of Thomas W. Means.

A. The Huntington note was paid on or about the first of June, 1889, and the money for that, and the bonds themselves I turned over to my sister Margaret. I cannot give the dates from memory. It was soon after I received it, before I left home in '89.

Q. 786. Were there no other assets of the Labrot Trust
120 turned over to you by William Means, or came into your hands, other than the Huntington note and the bonds to which you have referred?

A. No. There was nothing else.

Q. 787. Were those bonds worth par or less than par, or more than par?

A. They were worth par. They were a seven per cent. bond on which the interest has always been paid. There were not enough of the bonds on the market to be well known to bring a premium.

Q. 788. The interest also was paid on the Huntington note up to the time that it was paid or transferred?

A. Oh, yes.

Q. 811. Mr. Means, when the Metropolitan bank first failed and you first heard of it, you came to Cincinnati, did you not?

A. No, not when I first heard of it.

Q. 812. How soon after?

A. I came in a few days after.

Q. 813. Before coming down the first time did you communicate the information of the failure to your father?

A. I did. We talked about it. We got the news in the newspaper and it may have been read to him before I saw him. We talked about it and he knew why I was going.

Q. 814. Did you come down at his request?

A. Well, no; I can't say that I came at his request. I came of my own volition but he was anxious to know about the matter—about William, and hear from him.

Q. 815. What did he say about it? I do not mean his exact words, but the substance?

A. Oh, I cannot recollect. It was some conversation we had. It might have been an hour or two, at different times, of two or three days.

Q. 816. Was your father then in a mental condition to have an hour or two conversation consecutively with regard to any subject?

A. I used to go in and spend a whole morning with him and whole evening with him talking to him, and we would talk of various subjects and he could talk about one subject or others. It is not probable that we would talk about one subject all the time during one visit.

Q. 817. You have stated that you probably talked an hour or two with him of this matter of the failure of the Metropolitan bank. Now, what I desire to know is, whether at that time, your father's mental condition was such that he was enabled to carry on a conversation an hour or two, upon any one subject consecutively and intelligently?

121 A. I think he could. I think his condition was such. I never tried to test in that way his condition.

Q. 818. For what length of time did his mental condition continue so that he was enabled to intelligently carry on a conversation and to understand business affairs afterwards?

A. I think he could understand and converse about business affairs until the following summer, that is, the summer of 1889.

Q. 819. Throughout the entire year of 1888, then, he was competent to understand and determine about his business matters?

A. I think so. I thought so then.

Q. 820. You thought so then?

A. Yes.

Q. 821. During the year 1888 did you not consider your relations to your father's business as that of an executor administering his estate properly?

A. No, I did not.

Q. 822. Did you not so write to William Means during the year 1888?

A. I wrote to William Means—I think I can give substantially, but not the words—that I felt I ought to act in that estate as I might as an executor, as I probably would soon have to act as an executor; that is, I considered that would come soon.

Q. 823. Wasn't this the idea which you wrote to William Means, that he could rely upon you and his sisters on the matter of money, but in the management of your father's business you must act as an executor, which you expected in a short time you probably would be by an appointment from the probate court?

A. Wrote all that in a letter?

Q. 824. Yes, substantially.

A. No, I don't think I did. I think it is nearer as I got it.

Q. 825. Did you not write in July, 1888, to William Means: "You can depend on Mary, Maggie and myself in money matters, but father's affairs I must handle with the care of an executor and probably before no long time as one under a probate court."

A. Let's see the letter. (That part of letter shown to witness.)

Q. 826. That is your handwriting, is it not?

A. That is in my handwriting.

Q. 827. And it reads as I read it to you?

A. I believe it does. I did not remember the word- pro-
122 bate court. I did not suppose I had written it, for we do not term it the probate court on our side of the river generally.

Q. 828. Now, Mr. Means, if your father was then perfectly competent to determine about the management of his business, why was it that it was necessary, as you say here, "but father's affairs I must handle with the care of an executor"?

Objected to.

A. My father was at that time blind and could not walk around without some one to lead him, and could not come to the office to talk about his business and I felt then that it was necessary for me to be careful in the matter of business, almost as if I was acting as an executor. I was the active working man.

Q. 829. Now, Mr. Means, you came to Cincinnati, you say, the first time, on that trip you did not, as I understand you, make the payment of $125,000?

A. No, sir. I made no payment of anything.

Q. 830. How long did you remain here on the first trip?

A. I think two days.

Q. 831. Then you returned to Ashland, did you not?

A. I returned to Ashland from here.

Q. 832. What communication did you have with your father upon your return to Ashland?

A. I told him of William's debt to the bank—individual debt—and what it would probably amount to, and that friends here advised it was for William's interest that that debt, individual debt, should be paid. I told him that the securities which William had turned over to the bank as security on the debt would some of them probably be sacrificed at a sale here—that I thought we had better pay the debt.

Q. 833. What did he say?

A. He said that he was satisfied to do whatever I thought was best.

Q. 834. What else did he say about the matter other than to say to you that he was satisfied to do whatever you thought was best?

A. Well, I think I have answered it. I cannot repeat the conversation between us any more than give the general result of it.

Q. 835. Can you now remember anything that your father said to you upon that occasion excepting to say to you that he would be satisfied with anything that you deemed best?

123 A. He spoke of how we could raise the money—how much it would take and how it could be raised.

Q. 836. What did he say about that?

A. Well, that certain securities that he had could be sold and that some money we would have to borrow.

Q. 837. Did he say that to you or you say that to him?

A. Well, the conversation on the subject was between us and what each one said specially, is pretty hard to say now.

Q. 838. Well, now, do I understand you to say that at that time, Mr. Means, your father's condition mentally was such that he could intelligently understand and grasp that situation and deal with it?

A. I think it was. He seemed to understand it.

Q. 839. And you thought he was in a condition then to fully understand it?

A. I thought so.

Q. 840. Well, what else can you remember that was said by him about the matter other than securities and his willingness to do whatever you thought best?

A. Well, I can't. I say again, I can't recollect the conversation that we had more than four years ago.

Q. 841. Who was present at the time of that conversation besides yourself and your father, if anybody?

A. I don't know whether any one was present—there might have been, of the family, in and out—probably were.

Q. 842. Where was it? At your father's residence or yours?

A. My father's house. Part of it was at the bank in Ashland.

Q. 847. How long was it after your return to Ashland from your first visit to Cincinnati before you returned to Cincinnati? What length of time intervened between your first visits in February, 1888?

A. I got home on Sunday. Left there on Tuesday following.

Q. 849. Then, when you left Ashland on Tuesday, you arrived here on Tuesday, I presume?

A. Arrived here Wednesday morning.

Q. 850. How long did you remain here in Cincinnati then?

A. I think only that day.

Q. 851. Only that day?

A. I think so.

Q. 852. Was it that day that you paid the hundred and twenty-five thousand dollars to McConville?

124 A. I think it was.

Q. 853. When you paid that money you took up the securities and collaterals that were in McConville's hands, did you not?

A. I received them on the day that I paid, and the notes of William to the bank.

Q. 854. When you were down here on the first occasion, did you have any conversation with William Means about the payment of this $125,000?

A. I did, both days.

Q. 855. Did he then advise its payment?

A. I told him what I had been advised and he assented to it, told me about what he thought he owed—gave it to me in a lump. I supposed he would give me a list of the different notes and give me a list of the securities he had given to the bank—given it, I suppose, to the examiner about the time of the failure—maybe before, some time.

Q. 856. Didn't William Means then question to you the advisability of making that payment?

A. No, he did not.

Q. 857. The conversation between him and you upon that subject arose, as I understand you, by a suggestion from you to him of what your friends had advised should be done?

A. When I met him I told him what they thought might be of advantage to do.

Q. 858. Do you remember what he said about it?

A. No, I cannot state what he said.

Q. 859. Only that he assented to it?

A. I saw him on two days. The first day, I told him what was thought. He did not express any opinion on the matter. I spent part of the forenoon there with him and agreed to meet him in the afternoon; went back there in the afternoon and he was out. He was gone probably two hours—did not come back until in the evening—well, towards—it might have been half past three or half past four—probably between that time. The people were coming in and talking to him and I waited about; had asked him to give me in the morning a statement of what he owed and what he had pledged. Then I left there about night without having gotten anything from him. This was at the Grand hotel. It was not at the bank. The morning, part of the time he was in his room and part of the time in the rotunda and some of the lobbies. I went back the next day and he was writing, making a list of the securities he had pledged and stating in a round sum of one hundred and twenty
125 thousand dollars as being about the liability—I think, was the word he used. And I told him then that I thought I could arrange for the payment, to make the payment, that I would go home that night. I didn't think I could be ready to come down by Monday's boat. We had to go by steamboat then. But that I probably would be able to leave Tuesday morning and get here on Wednesday, as I did. He not only made no objection to it, but seemed then to appreciate, even somewhat better than he did the first day, the danger that he was in.

Q. 860. What did he say that left upon your mind the impression that he assented to it?

A. He gave me a statement that he owed about $120,000. He gave me that with a list of securities and we talked. Besides that, he wanted to borrow—in the morning when I got there, he wanted to borrow from Captain Holloway, two thousand dollars and pledge steamboat stock shares as security, and Holloway called—I was in sight of them, and I am not sure whether I went there with Mr. Holloway or not. I rather think that we went together, or met there. Holloway calls to me—one of them had an envelope with a certificate of stock in it, and said that he did not have the money to lend—he could probably get it, but if I could get it, it would do just as well. Holloway called to me and said that in the presence of William and before I left there on Saturday, I gave him my two checks on the Ashland National bank, one for $700 payable to a Mr. Labrot, of Frankfort, Kentucky, another for twelve hundred

dollars, my recollection is, payable to Samuel F. Hunt, which he said was for Mrs. Means.

Q. 861. Did you take the stock as collateral?

A. I took the stock home. I told him—I am not sure whether I took it home that night, but I think I took it home with me. That was sixty-nine hundred dollars. It is my recollection there were two certificates.

Q. 862. On that occasion, that stock at that time was worth par?

A. Yes, sir, about par. I told him that I thought father had better take that stock.

Q. 861. Mr. Means, when you were last here on examination I asked you with regard to the bill book of Thomas W. Means, and you stated, if I remember correctly, that there was such a book and that you thought it was possibly in your office at Ashland. Did you take occasion to examine for such a book?

A. Yes, sir. They examined. I left it there when I went
126 away from home in '89. And they can't find it now. They don't know what became of it. I left the book there. I thought possibly Adams might have gotten it with the other book, but he says he has no recollection of it. He says he knows the book but he don't think he got it when he was appointed committee.

Q. 862. Have you made or caused to be made such examination as that you can state or feel willing to state positively that it is not there now?

A. Both of my sons examined thoroughly and they said that they cannot find it anywhere. I told them where it always was when I left there, where I kept it and where the other books were and they think it is not in there now and they went to see Adams to see if he didn't have it at home. To the best of my belief it is not there.

Q. 863. And you have no knowledge where it is?

A. I haven't any knowledge where it is. I left it there with these books that are here.

Q. 864. I also requested that you would prepare a statement showing the various securities of all kinds that were assigned to you or transferred to you by your brother William after the failure of the Metropolitan bank and showing what disposition you had made of the same, the amount that you had realized upon—any that you had realized upon—and what disposition had been made of the money and what was done by you with those that were not realized upon. Have you had such a statement prepared?

A. I have had a memorandum prepared. I have the memorandum here.

EXHIBIT 1.

Cincinnati, January 25, 1893. B. Perin, Special Examiner.

Memo.

1888.				
13th	Feb'y.	Steamboat stock, C. P. B. S. & P. Pkt. Co.: 69 shares, and transferred to T. W. Means, 11th Feb'y, 1888, and credited Wm. Means cur. account on Thos. W. Means' books, 13th Feb., 1888, journal page 179, at par	.....	6,900.00
127				
17th	Feb'y.	Norton iron works stock: 9 shares transferred to Thomas W. Means and entered 17th Feb., 1888, on his books, 179 page journal	9,000.00	
17th	Feb'y.	Ashland National bank stock: 35 shares transferred to Thomas W. Means, and entered 17th Feb., 1888, on his books, 179 page journal	3,500.00	
			———	12,500.00
20th	Feb'y.	Steamboat stock: 63 shares transferred to Thomas W. Means, and entered on his books 20th Feb., 1888, journal page 179	6,300.00	
20th	Feb'y.	Means, Kyle & Co. stock: 10 shares transferred to Thomas W. Means, and entered on his books 20th Feb., 1888, journal page 179	10,000.00	
			———	16,300.00
6th	March.	Mt. Auburn Cable Ry. Co. bonds of Cin., O.: 2 bonds No. 95 and 96, each 1,000.00, to Thos. *M.* Means, and entered on his books 6th March, 1888, J. page 181	.....	2,000.00
21st	April.	Credited on note No. 215, Wm. Means, dated 15th Feb., 1888, in favor of Thomas W. Means, as follows:		
		Under date of 17th Feb., 1888, J. page 185....	12,500.00	
		Under date of 20th Feb., 1888, J. page 185....	16,300.00	
		Under date of 6th March, 1888, J. page 185....	2,000.00	
			———	30,800.00
128				
2nd	April.	Ky. I., C. & M. Co. stock: 200 shares received 18th Feb., 1888, transferred to Thos. W. Means, and entered on his books 2nd April, 1888, J. page 183 @ 50% of par value to credit Wm. Means' current acc't.....	.....	5,000.00
1889.				
Feb'y	26.	Tellico Mfg. Co. stock for proceeds sale: 5 shares sold to M. Durner & Co., Cin'ti, O., at 52½% credited on Wm. Means' note No. 215, entered on Thos. W. Means' books 26th Feb., 1889, journal page 200	.....	2,625.00
1888.				
Feb'y	15.	Roan Mountain Steel & Iron Co. stock: 500 shares received 15th Feb., 1888, (from Jas. McConville, receiver Met. N. bank) par value, 423 share- rec'd ——		
		Total.. 923		
		18th Feb., 1888, from Wm. Means, transferred to Thos. W. Means, 14th Dec., 1888. 917 shares, at $30.00 per share, credited on Wm. Means' note No. 215 on 21st Jan., 1889. Entered on Thos. W. Means' books, Journal page 198.....	.....	27,510.00
		N. B.—This left 6 shares in the name of Wm. Means.		

129

1889.
July 18. Toledo mortgage on 74 shares in Toledo property mortgaged by Wm. Means to Metropolitan N. bank. Mortgage assigned to me by receiver of said bank, quitclaimed to me by Wm., and quitclaimed by me to Chas. T. Lewis for *for* $2,328.00, less $13.39 chgs. credited on Wm. Means' note No. 215, 18th July, 1889. Entered on Thos. Means' books, journal page 203 ..... 2,314.61

1888.
Feb'y 15. Distillers' and Cattle Feeders' Trust:
Received from J. McConville, rec. and C., 320 shares, par value $100.00 each per share.

July 23. 188. Received of George K. Duckworth, March, April and May dividends. Entered on Thos. W. Means' books, journal page 188, July 28.. 480.00

Aug. 31. 190. Received dividends for July. Entered on T. W. Means' books, J. page 190..... 160.00

1888.
Sept. 5. 190. Received of George K. Duckworth, June dividend. Entered on T. W. Means' books, journal page 190 .. .. 160.00

130

1888.
Sept. 28. 191. Received dividend for August. Entered on T. W. Means' books, J. page 191..... 160.00
Error in this amount; should have been $80.00 only.

1888.
Nov. 23. 191. Received dividend for Sept.:
Entered on T. W. Means' books, journal page 194. . ..... 106.67
Sold 20 shares @ 38¾..... 775.00
881.67

Credited on William Means' note, No. 215, journal page 194.

1889.
March 8. 200. 100 shares sold 6th at 34¼..... 3,425.00
200 shares sold 7th at 34¼ 6,850.00
10,275.00

Credited on Wm. Means' note No. 215.
T. W. Means' books journal page 200.

1888.
April 2. Received of Geo. K. Duckworth by deposit in Citizens' Nat'l bank, Cin'ti, dividend. 336.00
Nov. 28. Dividend, (October). 106.67
1889.
January 4. " November 100.00
February 1. " December 100.00
February 25. " Jan., 1889..... 100.00
April 8. " February... ..... 75.00
The above 6 dividends ($817.67) credited on account with John Means.

131 Metropoli'n Nat'l Bank stock from Jas. McConville, rec. & C.:

1888.
February 15. Certificates for 223 shares, $100.00 each.
19 March. 183. Recei'd from Ashland Nat'l bank certificates for 220 shares collateral to Wm. Means' notes:
No. 216, one dated 16 Nov., 1887, @ 3 mos.... 6,000.00
No. 217, one dated 10 Dec., 1887, @ 3 mos.... 9,000.00
15,000.00

1888.		Dividends:		
Dec.	20.	196. For checks of Jas. McConville, agt., &c.:		
		Dividends No. 1, 20 % on 220 shares	4,400.00	
		Dividends No. 2, 10 % on 220 shares	2,200.00	
				6,600.00
		Metropolitan N. Bank stock:		
		Credited note No. 216, Wm. Means.....	2,640	
		Credited note No. 217, Wm. Means.....	3,960	
				6,600.00
		Dividend No. 1, 20 % on 223 shares	4,460	
		Dividend No. 2, 10 % on 223 shares	2,230	
				6,690.00
		Credited on Wm. Means' notes:		
		No. 215, T. W. Means, journal, 196 page.		
1889.				
March	29.	200. Dividends No. 3, 5 % on 220 shares.....	1,100.00	
		Credi'd on Wm. Means' note No. 216.....	440.00	
		Credi'd on Wm. Means' note No. 217....	660.00	
		200. Dividend No. 4, 5 % on 223 shares.....	1,115.00	
		Credi'd on Wm. Means' note No. 215..... ..	1,115.00	
132				
April	29.	202. Dividends No. 4, 5 % on 220 shares.....	1,100.00	
		Credi'd on Wm. Means' note No. 216 .... $440		
		Credi'd on Wm. Means' note No. 217 660		
			1,100.00	
		202. Dividend No. 4, 5 % on 223 shares	1,115.00	
		Credi'd on Wm. Means' note No. 215.....	1,115.00	
1889.				
Dec.	26.	204. Dividend No. 5, 5 % on 220 shares	1,100.00	
		Credi'd on Wm. Means' note No. 216 .... $440		
		Credi'd on Wm. Means' note No. 217 660		
			1,100.00	
		Dividend No. 5. 5 % on 223 shares.....	1,115.00	
		Credi'd on Wm. Means' note No. 215..	1,115.00	
1890.				
April	12.	206. Dividend No. 6, on 220 shares 1 %... $220		
		Dividend No. 6 on 223 shares 1 % 223		
			443.00	
April	17.	Credi'd on Wm. Means' note No. 215	443.00	

Q. 866. This Exhibit 1 also contains, does it, a correct statement of the true amount realized by you upon these securities so far as they were realized upon the disposition made by you of the proceeds and of the stocks not realized upon?

A. It contains all, I think, upon which I realized. I am not sure that there were not some things turned back that were not on that. The memorandum that I had when I testified the other day, I did not have in making this, and you were to furnish me questions you wanted me to answer and I expected you would send them to me and I waited a day or two after I went home to hear from you before I began.

Q. 896. In these transactions and when you received these
133 collaterals from McConville and when you paid that payment of one hundred and twenty-five thousand dollars to McConville, did you then say to McConville that you were acting in this matter as the agent of your father or did you say to McConville that you were doing it yourself?

A. I told him that I was doing this for my father. It was my father's money that was buying this and I never told him that it was my myself and my money.

Q. 912. Are there any books, Mr. Means, which will show what is contained in the bill book of Thomas W. Means?

A. These books show everything that is on that bill book and a great deal more because it was begun after these books were started. The bills-receivable and bills-payable accounts will show everything that was on the bill book.

Q. 491. Do you know whether William Means about that time had any consultation with your father in regard to his business affairs about the time *for* the failure or shortly after the failure of the Metropolitan bank?

A. He never saw father, so far as I know, after the failure.

Q. 969. Mr. Means, why were the amounts that were paid out by you, the $125,000 paid to the Metropolitan National bank, and the other amounts, entered upon the books of Thomas W. Means in your account? Why did you put them in your account at all?

A. I put them there to show the transaction as it was. I wanted the account to show that I had done this.

Q. 970. If you were acting in the matter as the agent merely of Thomas W. Means, why wasn't the charge made direct to William Means upon the books of Thomas W. Means? Why was it run through your account at all?

A. Simply to show what I had done. I had no desire to cover up anything I had done, and made it so that it should show plainly. I proposed to close it by note as it was and then wipe out the credit.

Q. 971. Close it by what note?

A. By William's note.

Q. 972. Then William's note was taken when this account was closed, was it?

A. William's note. As soon as William's note was received, bills receivable was charged and my account was credited with the amount.

Q. 974. Until such time as you received William's note for that?

A. It did.

Q. 975. And then when you received William's note for it,
134 bills receivable was charged with that note and you were credited on your account?

A. My account was credited, making a settlement of the transaction.

Q. 976. When was the actual date at which William's note was received?

A. The date showing on the journal. Either that date or the day following. I made the payment on the 15th here. I came home on the 16th and made the entry in which I charged myself, and I made the entry on the credit charging bills receivable on the 22nd day of February, page 180 of Journal B. I either received that note on the 22nd or on the 21st. If there was more than one day intervened I would mark the date and make the explanation, and where I made the entry on the succeeding day—if it was on the 20th and I made it on the 21st, I might date it the 20th, and where there was two days, I never did. I always made that a rule never

to trust my memory for more than one day and the entry shows the date of the note.

Q. 977. That was a note from William Means to Thomas W. Means?

A. Yes, sir; a note that was held and surrendered, which the executors or administrators had.

Q. 978. You turned that note over to the administrators?

A. Yes, sir. That note was among my father's papers. It was not among my papers. It was among his papers where they took that note with other notes and other securities, stocks, &c., and like papers. It was turned over first to the committee, and by him to the administrators.

Q. 982. In transacting business for your father during his lifetime, when you collected money belonging to him, or received money belonging to him and deposited it in bank to his credit, did you charge yourself with the money and credit yourself with the deposit?

A. Sometimes I did and sometimes it was deposited direct to his credit. The account on the books shows sometimes one way and sometimes the other.

Q. 983. What I cannot understand is, why it was ever charged to you if you were transacting business for him and collecting his money and depositing it in bank and holding power of attorney to sign checks upon the account; why was it ever charged to you?

A. Because sometimes it made the transaction plainer to him or to me to understand, and I might be away from home and collect money for him and deposit in bank here where he kept no
135 account, and when I went home I would deposit the amount to his credit up there. He kept no account in any bank in Cincinnati so far as I know, ever in his lifetime.

Q. 997. Mr. Means, you have furnished me this morning, in response to my request, a statement which is your statement and claimed by you to be a correct statement of your individual account against William Means and I will ask you if that is it, so we can have the examiner identify it?

A. That is the paper.

EXHIBIT 2.

William Means in account with John Means.

1888.			
Feb'y 16.	To Thos. W. Means f'r amount paid James McConville, receiver of Metropolitan Nat'l bank, Cincinnati, 15th inst.	$125,911.74	
Feb'y 22.	By Thos. W. Means f'r note of Wm. Means, dated and due 15th February, 1888, in favor of Thos. W. Means	.....	$125,911.74
April 3.	To Citizens' Nat'l bank paid James McConville, receiver, on recording, &c., mortgages Findlay & Toledo properties	15.15	
July 28.	To Ashland Nat'l bank paid Thos. W. Means f'r Dist. & C. F. Trust dividend	480.00	
Aug. 31.	" Ashland N. bank paid Thos. W. Means for dividend for Dist. & C. F. Trust	160.00	

136				
Sept.	5.	" Ashland N. bank paid Thos. W. Means...	160.00	
	7.	" Ashland N. bank paid Thos. W. Means...	350.00	
	12.	" Ashland N. bank paid Thos. W. Means f'r balance of %	315.85	
	6.	" cash f'r express charges on 10 bonds Labrot Trust	5.00	
April	2.	By Citizen's Nat'l bank f'r dividend on Dist. & C. F. Trust...	.....	336.00
July	23.	" Ashland N. bank f'r c'k G. K. Duckworth for dividends on Distillers' & C. F. Trust March, April & May dividends. See letter of 20th inst.	.....	480.00
Aug.	30.	" Ashland N. bank f'r dividend Dist. & C. F. Trust July dividend..... ...	.....	160.00
Sept.	4.	" Ashland N. bank f'r check of G. K. Duckworth June dividend Dist. & C. F. Trust.	.....	160.00
	6.	" for 10 int. coupons of the A. C. & I. R'y bonds received this day from Gilmour per Hunt	.....	350.00
			1,486.00	1,486.00

William Means in account with John Means.

1888.				
Sept.	28.	To Ashland N. bank. Paid Thomas W. Means.	173.15	
	29.	" Ashland N. bank for error in credit 28th inst. div'd Dist. & Cattle Feeders' Trust, which was entered $160 when it should have been $80.00 only.....	80.00	
137				
Oct.	19.	To Citizens' N. bank paid Sam'l F. Hunt 18th inst.	500.00	
Nov.	5.	" Citizens' N. bank deposited with James McConville in trust. See receipt dated 1st inst.....	24,099.00	
		Deposited with same, 2nd inst.....	911.00	
		To Thos. W. Means, David Sinton's acceptance my draft favor James McConville in trust. See receipt. N. B.—All in one receipt (75 M).		
		N. B.—McConville receipt is for $75,000.00. By mistake I paid him $10.00 too much.	50,000.00	
	23.	To Ashland Nat'l bank, paid Thos. W. Means.	881.67	
1889.				
Jan'y	9.	" Ashland Nat'l bank No. 235 to remit Sam'l F. Hunt, att'y	1,000.00	
	21.	" Ashland Nat'l bank Cincinnati draft remitted Mrs. M. E. C. Means...	500.00	
Mar.	6.	" Ashland Nat'l bank Mrs. M. E. C. Means for Gertie.....	150.00	
	8.	" Ashland Nat'l bank paid Thos. W. Means on D. & C. F. Trust. Sold.....	10,275.00	
May	17.	" Ashland Nat'l bank f'r Cincinnati draft sent Gertrude E. Means.....	100.00	
June	8.	" Ashland Nat'l bank f'r N. Y. draft remitted you as per request. Letter 1st inst.	300.00	
138				
July	18.	" Ashland Nat'l bank paid Thos. W. Means on your note of 15th Feb'y, 1888.....	2,314.61	
Dec.	27.	To Citizens' Nat'l bank c'k No. 31 to C. W. Baker, Esqr., att'y, for his fee as per his letter Dec. 23rd, 1889.....	2,000.00	

1890.				
July	24.	" Citizens' Nat'l bank f'r c'k C. W. Baker in full (July 15th)	1,500.00	
		" Citizens' Nat'l bank f'r c'k S. F. Hunt	3,500.00	
			98,784.43	

William Means in account with John Means.

1891.		Am't brought forward	98,784.43	
Feb'y	11.	To Ashland N. bank Cincinnati draft. N. B.—Seaton to pay Burnett House bill of William Means & family 10th January, 1890. Omitted to journalize at proper time	315.00	
Aug.	1.	To cash f'r am't to pay Burnett House % Margo C. B. 415 Less am't charged him Feb'y 11th, 1891, J. P. 284 315	100.00	

CREDITS.

1888.				
Sept.	28.	By Ashland N. bank f'r dividend Dist. & C. Feeders' Trust. (See below 29th inst.)	.....	160.00
		" Ashland N. bank, assignee Osage Iron W'ks Co.	.....	13.15
	29.	" Ashland N. bank, paid me by Thos. W. Means to correct error 28th inst.	.....	80.00
139				
Oct.	19.	" Ashland N. bank f'r Thos. W. Means' check	.....	500.00
Nov.	5.	By Citizens' N. bank dividend of Dist. C. F. Trust	.....	106.67
	16.	" Thos. W. Means f'r Wm.'s note in favor of Thos. W. Means dated 9th inst. @ 1 day	.....	75,000.00
	23.	For 20 shares Dist. & Cattle Fdrs.' Trust sold by Citizens' Nat'l bank, Cin'ti. See letter 21st inst. & entries preceding this which leaves 300 shares unsold	.....	775.00
	28.	By Ashland N. bank f'r div'd check payable 30th inst. Dist Cattle Fdrs.' Trust	.....	106.67
1889.				
Jan'y	4.	" Ashland N. bank f'r Dist. & Cattle Fdrs.' Trust dividend payable 31 ult.	.....	100.00
Feb'y	1.	" Ashland N. bank f'r dividend Dist. & Cattle Fdrs.' Trust	.....	100.00
	25.	" Ashland N. bank f'r dividend Dist. & Cattle Fdrs.' Trust, January div.	.....	100.00
			98,699.43	77,041.49

William Means in account with John Means.

1889.		Am'ts brought forward	98,699.43	77,041.49
Mar.	8.	For 300 shares Dist. & Cattle Feeders' Trust sold the Citizens' Nat'l bank, Cincinnati, viz., 100 shares as per letter of 6th, 200 shares as per letter of 7th. See preceding entries	.....	10,275.00
140				
Apr.	8.	Ashland N. bank f'r Feb'y dividend D. & C. F. Trust dep'd 3d inst.	.....	75.00

July	18.	Ashland N. bank f'r am't realized on ⅛ share in the Toledo property mortgaged by William to Metropolitan Nat'l bank. Mortgage assigned to me by the receiver of the bank, quitclaimed to me by William and by me to Charles T. Lewis for $2,328.00, less $13.39 charged	.....	2,314.61
				89,706.10
		N. B.—The $500 charges of right should, as Hunt writes, be largely paid out of the $2,328, but I have given William Means' % the benefit by deducting the whole out of the interest due to me on Carbusier note. See letters from Sam'l F. Hunt dated 9th & 17th inst.		
		Balance	.....	8,993.33
			$98,699.43	$98,699.43

Q. 1003. Isn't it true that on that day, on February 21, '88, you wrote to him stating that you desired to have the note to your father and to make the entries on his books before you left Ashland going East?

A. I did.

Q. Why would you write to him stating you desired to have the note executed before that time, if the note had already been executed?

A. Let us see the entry. I may have made a mistake about it in one day or two. I was speaking from recollection. It may
141 have been on the 21st, for I find I entered it on the 22nd, so that it might have been mailed on the 21st. When I answered it, my recollection was that the entry here was on the 20th. I was mistaken.

Q. 1005. The note, I am talking about.

A. The note is dated the 15th of February, 1888.

Q. 1006. When was it executed?

A. I suppose he executed it after he received my letter; I don't know. I only know when I received it. I wrote to him asking him to send me the note.

Q. 1007. I will ask you if that is the original letter written by you to William Means.

A. That is the original letter.

Q. 1008. That letter was written on the date it is dated, was it?

A. That letter was written on the date it was dated, and you see it relates—I think that I wrote probably on the 20th to him, asking for the note, and I think that is where I confounded the date of the 20th with the 22nd.

The letter is offered in evidence, marked "Exhibit 3, January 26, '93. B. Perin, sp. ex." Copy of letter is as follows:

ASHLAND, KY., 21*st February*, 1888.

William Means, Esq., Cincinnati, Ohio.

DEAR WILL.: I wrote you yesterday enclosing papers. Am anxious to close up this matter this week. As I propose to leave

Saturday 25th inst. for N. Y. city, returning on or about 3rd prox. My address in N. Y. will be 31 Burling slip. I desire to have the note to father and to make proper entries on his books, and my own before leaving here. Have had transferred to father stocks, viz:

69 shares Cinti. Ports. Big Sandy & Pomeroy Pkt. Co. at	$6,900 00
35 shares Ashland National bank at	3,500 00
9 " Norton iron works at	9,000 00
63 " Cinti. Ports. Big Sandy & Pomeroy Packet Co., at	6,300 00
10 shares Means Kyle & Co., at	10,000 00

and do not like to go farther without the authority for which I wrote yesterday. Don't forget to write asking father to protect your notes at the Ashland National bank, and better send another paper authorizing holding, selling or collecting on the collateral 220 shares M. N. Bank stock.

Yours truly, JOHN MEANS.

142 Q. 1009. These papers that you wrote him about were powers of attorney, were they not?

A. I think so.

Q. 1010. Let me see if I can refresh your recollection. Is the paper I now hand you your original letter of the 20th and the one referred to in the letter that has just been introduced?

A. I think so. And I think that probably I sent with that a form of note—a note at one day or something. It don't show what papers were enclosed and I have no memorandum to *to* go by.

Q. 1011. I will ask you whether you did not send a power of attorney—a general power of attorney?

A. I think I did. The papers referred to would cover all. I do not recollect now what papers they were. I think it was a general power of attorney.

Letter above referred to offered in evidence, marked "Exhibit 4. Cincinnati, Jan'y 26, '93. B. Perin, sp. ex." Copy of letter is as follows:

ASHLAND, KY., *20th February*, 1888.

Wm. Means, Esqr., Cincinnati, O.

MY DEAR WILL.: Herewith find forms which explain themselves. Please copy sign and return to me at your earliest convenience. Also the receipts for cash paid. The sixty-nine (69) shares Big Sandy Pkt. Co. were credited to your "current ac." on father's books. There will be need to sell some of the securities to get money to pay what we have borrowed. I also think it best for you to have as herewith indicated fearing suits be brought against you and other directors which may give you trouble as it now stands. Father is growing more feeble and almost blind. Has seen his children and others for the last time unless an operation restores his sight again. All well, with love to Martha.

Yours truly, JOHN MEANS.

Q. 1012. I asked you yesterday if your brother William did not place his matters in your hands and to be by you managed for him in his absence, and I understood you to say that such was not the case; is that correct?

143 A. No further than I have given here. I think I have given everything that I received from the bank or from him.

Q. 1013. You assumed no general management of his affairs by any arrangement with him with regard to the Labrot Trust or anything else?

A. I did not until months afterwards. I did not know of the Labrot Trust.

Q. 1028. Have you, Mr. Means, the letter to which your letter of the 18th of April to your brother is an answer, where he says in this letter "You wrote me that you had only asked me to pay the trust, yet you know that all I paid has been with knowledge and advice of yourself or your counsel or both." Have you the letter to which that is the answer?

A. What does that refer to?

A. It refers to William Means' letter complaining about payments made by you and stating that the only payment he asked you to make was the Labrot Trust. And in this letter in reply to that you admit that, that William being away and Baker in Europe and nobody but you and Mr. Hunt here, that some mistakes had been made. Now, what I want to know is, have you the letter to which that is a response?

A. I think I have. (Searches for letter but does not find it.)

Q. 1029. Mr. Means, in this letter to which I have called your attention, you use this expression: "I certainly have had no desire nor intention to pay any more than needed. My own selfish interest was against any payment." Now, if you were paying that as the agent of your father and out of your father's estate, what selfish interest would you have in the matter?

A. My interest would have been to have kept the funds in the estate and let it accumulate and enlarge it and increase it and invest it and in loaning it out.

Q. 1030. If it was to be charged to William Means' interest in the estate, so that it would still continue in the estate as an asset, or as a claim against his interest, you would not have any selfish interest in it?

A. It was invested better than it was in lending it to him.

Q. 1031. Then the sole selfish interest that you refer to there is, the difference of interest to you as one of the five devisees of the will of Thomas W. Means in the difference between the investments that the money was then in and the interest it would draw as a charge against William Means; is that it?

144 A. That is it; and the trouble I was put to in trying to manage the affairs and save him from trouble.

Q. 1032. In this letter you say this, that you deposited the $75,000 hoping to secure a *nolle*, "I had been written to both by Baker and by Hunt to come to Cincinnati as to the amount that I had to agree with McConville, and it was on the opinion of General Hunt so

strongly expressed in favor of it that I made the pledge." Now, why was it necessary, if Mr. William Means had agreed to your doing this, and the amount had been understood between you and William Means before he went abroad and it was understood you were to make this pledge, why was it necessary or advisable for you to write to him as you have written here, saying that you did it on consultation with McConville and that you did it on the opinion of General Hunt so strongly expressed? Why was that necessary? Why didn't you simply say to him "Why, I explained that matter fully when you were here and you desired me to do it and I did it at your desire?"

A. That don't state that.

Q. 1033. This letter don't state that. I say, why didn't you just write that to him?

A. The letter states that fact that I did that, coming here on letters from both of them asking me to come, and I didn't claim and don't claim in that letter that I had consulted with William when I made that deposit.

Q. 1035. Just after it was done, before he gave his note for it?

—. ——.

Q. 1036. That was after his return from abroad, was it when he was at New Haven?

A. No, that was in November of '88.

Q. 1037. When was the deposit made—in that connection?

A. About the first of November. The first of November, I think. First of November, '88, and I saw him about the tenth of November—about a week later.

Q. 1038. Well, then the deposit was made by you before William Means knew anything about it?

A. It was, and I have not testified to anything to the contrary. If I have, it has been misunderstanding as to the question on my part.

Q. 1039. Then the first that William Means knew of this deposit of $75,000 was after the deposit had been made here by you and you went to New Haven and then told him about it?

A. It was after the deposit was made. I may perhaps have written him before I went. I did write him that I was coming
145 and I don't know whether in that letter I mentioned the deposit, or until I told him. He was speaking to me.

Q. 1041. I call your attention to the statement of William Means about that matter in this letter to his daughter in which he says: "Brother John is here and informs me of an offer to pay $75,000 more to the bank for the promise of a dismissel of the suit or a pardon from the President. I have told him to cancel this arrangement at once, that too much money has been paid already." Now what is the fact about that in the light of that statement on William Means?

A. I told him what I had done and he executed his note to my father for the $75,000 and accompanying agreement or authority that it should be taken from his distributive part of the estate. There was a form attached to the note and that was the way that he

assented to it, by giving his note. I could not compel that note from him.

Q. 1042. Is this true as stated by William Means: "I have told him (referring to yourself) to cancel this agreement at once, that too much money has been paid already"? Is that true? Did William Means tell you at that time to cancel that $75,000 arrangement at once?

A. No. He did not tell me. I doubt whether if he had told me, I could make the bargain. It was a matter with McConville.

Q. 1043. I am asking to get at the facts and not to argue the matter with you.

A. He did not tell me to cancel it, but executed his note for it.

Q. 1044. Did he understand at the time that he executed that $75,000 note that that note was for this purpose?

A. He did. I explained it to him as well as I could explain it—the whole purport of it.

Q. 1045. You stated, if I remember correctly, in your testimony taken the other day, that this $75,000 was not deposited to secure a *nolle* but was so much to be paid on account of William Means' indebtedness to the bank other than the $125,000, did you not?

A. I did not state it that way.

Q. 1046. Please let us understand your recollection of how you did state it or how you intended to state it.

A. What I intended to state was, that it was to be applied provided there was a *nolle* or discontinuance—I believe the term that was used—of the suit, or pardon from the President. It was to be applied on his indebtedness to the bank.

146 Q. 1047. Then this statement is true, as made in your letter, that when you deposited the $75,000 you were hoping to secure a *nolle?* That is true?

A. That is true; yes, sir.

Q. 1048. You deposited that $75,000 with the hope that thereby you would secure a *nolle?*

A. *Nolle* or pardon without trial.

Q. 1049. And if a *nolle* or pardon without trial was not secured, they were to return you the $75,000?

A. That was it. Not "they;" it was not deposited in the bank.

Q. 1051. The $75,000 was deposited with McConville as an individual by — if the *nolle* was granted, or pardon without trial was secured, then this $75,000 was to be applied towards the payment of William Means' debt to the bank as the — claimed?

A. I think so.

Q. 1052. If that was not done, if the *nolle* was not secured or the pardon not obtained without a trial, the $75,000 was to be returned to John Means?

A. Yes, sir.

Q. 1053. Mr. Means, the $75,000 was returned to you?

A. Yes, sir.

Q. 1054. Then, when that was returned to you, the note of William Means for $75,000—interest was computed on that, wasn't it, and this $75,000 credited on it?

A. $75,000 was credited on it. There was no interest computed in it.

Q. 1066. Well, Mr. Means, on page 10 of your former testimony, you say that on being asked when William Means started in business for himself, you say that He was at places in father's interest as well as I was. What places was he at in your father's interest?

A. Doesn't it give it there? I thought I answered there.

Q. 1067. I then asked you when he was at Pine Grove furnace and asked you if he had not a personal interest there and you said Yes.

A. I think I did answer, but I will answer now. He was at Vinton furnace. He was at Ohio furnace.

Q. 1068. For what length of time at Vinton furnace?

A. I cannot tell.

Q. 1070. He was at Ohio under salary, was he not?

A. Yes, sir.

Q. 1071. Of $600 a year?

147 A. I don't know what salary he got. He got some of the time more than that and some of the time probably less. They paid me that way when I was there.

Q. 1072. He was at Vinton furnace on salary, was he?

A. Yes. He was at Portsmouth with Means, Hall & Company on salary, and as partner, too.

Q. 1073. But there he had an interest of his own?

A. Had an interest of his own.

Q. 1074. Where else was he?

A. He was some of the time at father's home, and charged salary to him there.

Q. 1075. How long?

A. I can't tell. The book shows here that he charged salary.

Q. 1076. For what length of time?

A. Different lengths of time. I cannot tell from recollection.

Q. 1077. It was any considerable time or any considerable amount?

A. Yes. It is a considerable time and amount. It might have been $700 or $1,000—something like that—if you call that no amount for a beginning. It may have been more or less: I don't know. Something that he never paid me—a salary—for keeping his books at any time.

Q. 1078. No, but you were receiving salaries from the various companies where he had interests?

A. Yes. The same as he had other men for the same work.

Q. 1081. What amount of the Ashland Bank stock did you obtain?

A. He transferred to me of that two hundred shares, of which fifteen per cent., being three thousand dollars, was paid. And he transferred to me afterwards a thousand shares, on which $25,000 were paid.

Q. 1082. What is the date of that transfer? How long after the first one?

A. The first one was the 3rd of August—on or about the 3rd of August, '56, $3,000, and the thousand shares was the 4th of May,

'57. On August 4th, '57, he paid eleven thousand two hundred and fifty dollars for me.

Q. 1083. Well, now, at that time—in May, '57—when he transferred to you that thousand shares of stock, did he charge you any premium on it?

A. No; there was no premium.

Q. 1084. Is that all the Bank of Ashland stock that was transferred to you by your father?

A. That is all.

148 Q. 1091. You speak on page 34 in your testimony that at the time you were paying for your subscriptions in the Low Moor Iron Company, that your father then paid you back certain sums that you had loaned to him. Now, I would like to have you state a little more specifically, Mr. Means, when you loaned your father money, and what evidence there was of any loan of money from you to your father?

A. These books will show it. August 18th, 1870, I let him have $6,000. September 2nd, 1870, $6,000.

Q. 1092. Were not those credited to you in the book?

A. I think so.

Q. 1093. In your account?

A. I think so.

Q. 1094. And appear as a credit that reduces the charge against you?

A. Yes, sir.

Q. 1095. I want to know with regard to all of them.

A. In 1871, or about that time, he got part of the dividend of Means Kyle & Company belonging to me, $3,500.

Q. 1096. You were credited with that in your account, were you not?

A. I suppose I am. I would have to look at the books to see. July 1st, 1871, part of the dividend of Means, Kyle & Company, $1,500, and October 1st, 1871, $2,500. I say about those dates. They would be credited to his account on the books of Means, Kyle & Company, and might not go onto his books of the same date. He would have some of the book-keepers write it up afterwards.

Q. 1097. Well, then, Mr. Means, if there was an account on the ledger against you, showing a balance against you and due to your father, and your father took monies that were coming to you and credited you with them on your account that reduced his balance against you by that amount. How did you treat that as a loan by you to him? Isn't it a payment *pro tanto* to him upon your account?

A. I considered it as a loan and when he got in funds he paid me back the most of it.

Q. 1098. But you got the benefit of it as a payment upon your account at the time as a reduction of the balance against you, didn't you?

A. Certainly.

Q. 1099. And when he gave it back to you weren't you charged with it?

A. Charged with it again.

149 Q. 1100. And when you drew the moneys out to pay into Low Moor weren't you charged with them?

A. I thought I did not get it until I paid it into Low Moor, but I got it, I see, before, and I had it before that. I thought he was longer paying that than he was when I answered it.

Q. 1101. Then in that answer you were mistaken?

A. I was mistaken as to the time.

Q. 1102. And those items that you have testified to now are the items that you referred to as having loaned money to your father?

A. At that time; yes, sir.

Q. 1103. Now, Mr. Means, with regard to this bill book of your father. Have you no knowledge at all as to where that bill book is or can be at?

A. I have no knowledge whatever beyond where I left it.

Q. 1104. You left it in your office?

A. In my office. The office of the Ashland Coal and Iron Company. I think there are eight rooms.

Q. 1105. You have a vault there, have you, for keeping books and papers?

A. Yes, sir; I don't think that book was kept in a vault unless it was put there after I left.

Q. 1106. Well, have you made, or caused to be made, as thorough a search for the book as is practicable?

A. I did. I had both my sons hunt through it, and I understand they had the assistance of the other men there at hand—unless it was taken with those books when Adams got them, I think it must be about that office yet somewhere, but among old books. It might be piled in among others, and nothing but an overhauling of the whole office would discover it.

Q. 1107. I would like very much to get it, if you can, Mr. Means?

A. I have done all I could. I know that I left it in the office.

Q. 1108. And you have not seen it since?

A. I have not seen it since. That was in July, '89.

Q. 1109. Have you any knowledge or information in regard to it from anybody else since that time?

A. None whatever. I supposed it would be found with the other books in the room.

Q. 1113. I asked you this question, which was question 348: "When did your father first commence exhibiting symptoms of failure of his mental powers?" I see a note "Objected to,"

150 as irrelevant to the issues made in the case, and if there was an answer made, there is none here, and I desire to have an answer to that question.

A. That would be very difficult to answer.

Q. 1114. It may become a very important question in this case and therefore I would insist upon an answer.

A. It is easier to ask the question as to the date than to answer.

Q. 1115. I do not mean the exact day of the month, but I mean about when did your father first commence exhibiting symptoms of failure of his mental powers?

A. It might run back a good while as to when his recollection began to fail. I could not fix any time. It might be one year or five years.

Q. 1116. What do you mean by one year or five years?

A. That his memory was not so good as it was before.

Q. 1117. One year or five years from what time?

A. Before his death.

Q. 1118. You have already testified, Mr. Means, that a year before his death he was not competent to transact business.

A. Well, I mean a year before that, or five years before that. I could not put it longer than a year. I will admit that his memory began to fail him, but I do not consider that because a man's memory failed him that that is—in one sense it is a failing of his mental powers, but it is not imbecility.

Q. 1128. In that connection, Mr. Means, I desire to call your attention to a paper now handed to you and ask you in whose handwriting it is? (Paper dated Cincinnati, February 15, 1888.) Isn't this the paper which was sent by you to William Means in the letter of February 20, 1888, which has been offered in evidence?

A. I think that is the paper referred to.

EXHIBIT 6.

Cincinnati, Feb'y 15, 1893. B. Perin, Sp. Ex.

CIN'TI, *15th Feb'y*, 1888.

J. M. I hereby give you full power and authority to sell or collect at my expense, all or any portion of the securities pledged by me, to the Metropolitan National Bank of Cincinnati, O., to
151 secure the payment of my notes and of notes endorsed by me, which notes you have thus paid to the amount of one hundred and twenty-five thousand, nine hundred and eleven $\frac{74}{100}$ ($125,911.74) dollars. I hereby give you full power and authority to sell or collect all or any portion of said securities at any place either in the city of Cincinnati or elsewhere, at public or private sale at your option at any time hereafter without advertising the same or otherwise giving me any notice.

CIN'TI, *15th Feb'y*, 1888.

Due Thomas W. Means or order one hundred and twenty-five thousand nine hundred and eleven $\frac{74}{100}$ ($125,911.74) dollars with interest.

EXHIBIT 7.

Cin'ti, Feb'y 15, 1893. B. Perin, Sp. Ex.

(Letter-head of Grand hotel.)

CINCINNATI, *Feb. 21st*, 1888.

DEAR JOHN: Yours of the 20th rec'd, and I send you by this mail my note to Thomas W. Means or order, for $125,911.74. Receipts for $700, $1,200 and $1,000, Feb. 10th, 11th and 18th respect-

ively; and authority to dispose of securities, all as requested by you. I fully agree with your action in the premises, as the best preparation for the civil suits which are likely to follow. I regret to learn that father continues to grow more feeble, and that he cannot again see his children unless an operation be performed to restore his sight. Every word you write on this subject only adds to the oppression I feel in connection with my own calamities, which are much more crushing than I can express, and cause me to look with envy on any one who is ready to lay down this life for the life to come. There is no language to express my sense of my condition, which I could even bear, were not others called upon to share the burdens. I do not like to be alone, yet it would appear as 'twere better for all who are near and dear to me that my troubled existence should end in absolute isolation.

Affectionately, WILLIAM MEANS.

152 EXHIBIT 8.

Cin'ti, Feb'y 15, 1893. B. Perin, Sp. Ex.

(Letter-head of Grand hotel.)

CINCINNATI, *Feb.* 23*d*, 1888.

John Means, Esq., Ashland, Ky.

DEAR JOHN: Yours of 21st just received. Your requests are principally replied to in my letter of the 21st which of course had not come to hand when you wrote. I send herewith request to Thomas W. Means to protect my notes to Ashland Nat. bank maturing Feb. 21st, '88, for $6,000 and March 16th, '88, for $9,000 with authority to sell, collect, etc. Martha went out into the country this morning. All are reasonably well except myself, not being quite so strong as I could wish, and I am with love to all,

Sincerely yours, WILLIAM MEANS.

EXHIBIT 9.

Cin'ti, Feb'y 15, 1893. B. Perin, Sp. Ex.

MARCH 15TH, 1888.

John Means, Esq., Ashland, Ky.

DEAR JOHN: Yours of 9th was rec'd before that of 4th inst. was forwarded from the city and not being well and a good deal disturbed by recent events, am not very capable for business, and wish you would prepare any authority for selling, disposing or transferring the securities sent you, just as you think best, and send them for my signature. I think it doubtful whether or not it is best to pay any further assessments on the Covington Transfer Railway Co. on which $500 has been paid. It is principally in the hands of Mr. Louis Krohn, a shrewd Hebrew, who would give you his views as to the prospects of the company, and enable you to form a better judgment.

I cannot now make you any suggestions as to your manner of

keeping accounts, which I doubt not are in every way as they should be.

Truly yours, WILLIAM MEANS.

153 Q. 1142. The attorneys were employed by yourself or by William Means?

A. William means.

Q. 1143. You paid them in pursuance of directions and authority of William Means?

A. I paid them because he had nothing to pay with and they would not act without pay—and with his consent.

Q. 1145. Did William Means authorize and request you to pay the attorneys?

A. He did.

Q. 1146. Mr. Means, the amounts that you paid to attorneys for your brother William Means, as you have stated, upon his authority and by his request, you charged to him in your account, did you not?

A. No. Part is charged on father's account.

Q. 1147. It is either charged in your account or in your father's account?

A. No. There was five hundred dollars that I paid that I did not charge him.

Q. 1148. To whom was that five hundred dollars paid?

A. To Mr. Samuel F. Hunt.

Q. 1149. Then, as to all of it except the $500 paid to Samuel F. Hunt, it was charged William Means either on your books or on your father's books?

A. Yes, sir.

Q. 1150. And appears in this case either in the one hundred and thirty-six thousand dollars or in the amount due you or claimed to be due you?

A. No. It does not.

Q. 1151. What portion of it does not appear in either one of those accounts? All that was charged upon your father's account appears in that $136,000, doesn't it?

A. No, not as I understand it.

EXHIBIT 10.

Cincinnati, Feb. 6, 1893. B. Perin, Sp. Ex.

(Letter-head of Baker & Goodhue.)

CINCINNATI, *Dec. 28th*, 1889.

John Means, Esq.

MY DEAR SIR: I am in receipt of your favor of yesterday enclosing me $2,000 for fees. I think it is time at once to begin upon this man McConville; he is not acting in good faith, and we

154 are in condition now to fight him. If I were you I would come to the city at once and demand this money in person.

He refuses to give it to us upon the plea that he wants to see you and settle with you.

I am arranging with the district attorney to have the two remaining indictments nollied; he would claim the credit for it.

I would come to the city at your earliest convenience. If he will not give you this money, I would sue him for it, and if necessary, take harsher steps to compel him to disgorge. With kind regards, I am

Yours, sincerely, CHARLES W. BAKER.

EXHIBIT 11.

Cincinnati, Feb. 15, 1893. B. Perin, Sp. Ex.

(Letter-head of Baker & Goodhue.)

CINCINNATI, *July 17th*, 1890.

E. C. Means.

MY DEAR MADAM: I am in receipt this morning of Mr. John Means' check for $1,500, being payment of balance in full for services rendered in case of William Means. With very many thanks, I remain

Yours very sincerely, CHARLES W. BAKER.

EXHIBIT 12.

Cincinnati, Feb. 15, 1893. B. Perin, Sp. Ex.

(Letter-head of superior court of Cincinnati, consultation-room.)

JULY 30, 1890.

MY DEAR MR. MEANS: Your letter has been received.

I beg to acknowledge receipt of cheque for thirty-five hundred dollars ($3,500) in the matter of professional services.

Please *except* my thanks for your courtesy. My judicial duties, of course, will prevent me from rendering any active service but you need not hesitate in calling on me for any information connected with the business.

With most cordial good wishes for the family,

Believe me, faithfully yours, SAMUEL F. HUNT.

155 Mr. E. C. Means.

Q. 1189. When was that repaid to you by McConnville?

A. It was some time in February, 1890. Father's books show that.

Q. 1195. The $1,000 referred to in this letter is not the thousand dollars paid Mr. Hunt for which you have furnished a voucher, but is either a thousand dollars that is either charged to William Means in your father's books or for which a note was taken; that is correct, is it?

A. I think it is entered in father's books and I think on the current account.

Q. 1197. Mr. Means, did you send that check?
A. Yes, sir; I sent it.
Q. 1198. And it was charged to William Means?
A. He is charged on William Means' account on Thomas W. Means' books.
Q. 1199. Now, the next letter, please, Mr. Means?

Letter now handed counsel dated June 1st, 1888.

Mr. GLIDDEN: Nothing in the letter of June 1st, 1888, shown counsel, except an acknowledgment of the receipt of check for $1,386.36. I will offer in evidence this much of the letter:

"JUNE 1ST, 1888.

"MY DEAR JOHN: Yours of June 28 came duly to hand with check enclosed for $1,386.36, which was duly forwarded and acknowledged by a clerk, Col. Bright being temporarily absent."

Letter of June 14, 1888, handed to counsel for complainants. Contents offered in evidence, original marked Exhibit 13. Cincinnati, Feb. 15, 1893. B. Perin, sp. ex.

EXHIBIT 13.

Cin'ti, Feb. 15, 1893. B. Perin, Sp. Ex.

JUNE 14TH, 1888.

DEAR JOHN: Please send me checks as follows:

One to my order for taxes	Hamilton county.....	$257 02
Do.	Greene county..... ...	123 09
Do.	sundries.....	500 00
		$880 11

Our coal comes from the Hocking valley, and we always lay it in during the summer, when it is cheaper than any other time. It is a melancholy comfort to know I shall not have any taxes
156 in Hamilton county next year. Col. Bright informs me he will go East in a few days and look after the sale of Roan mountain, and will call here for a consultation. I wish to keep the Tellico stock—it is non-assessable and promises me not only profit, but employment, which are an object to me now, or in the near future. All about as usual and send love.

Yours sincerely, WILLIAM MEANS.

John Means, Esq., Ashland, Ky.

EXHIBIT 14.

Cincinnati, Feb. 15, '93. B. Perin, Sp. Ex.

JULY 17TH, 1888.

DEAR JOHN: Yours of 13th came to hand this morning. I think you had better accept the Kerper proposition for compromise, and

have that one out of the way. There are some other Findlay matters, which it would be well if they could be disposed of in the same way, but I have no data to give any account of them. If you will kindly ask Mr. Kerper to get a statement from De Camp it is probable you will get a good idea of them and know how to proceed. Kerper ought to be familiar with these things, as he introduced them to our notice. As to the affairs of which I wrote you last week, about which I am so anxious, their settlement can be delayed, as the parties would only need to be assured of safety, and a fair income until we are ready. They would not expect me to attend to details until in a proper condition of body and mind, which can be managed. I am as well as could be expected, though held down by mental troubles, and wondering if the day will ever break for me again.

Affectionately, WILLIAM.

EXHIBIT 15.

Cin'ti, Feb. 15, '93. B. Perin, Sp. Ex.

Ans'd Aug. 1.

JULY 27TH, 1888.

MY DEAR JOHN: I am in receipt of yours of 18th and 23d and can only say that everything is fully appreciated. Have
157 been very nervous and worried, but your letters did me much good. You are right to have the Whisky Trust transferred, and if they continue to pay regular dividends, the stock is likely to advance. If No. 171 certificate Metropolitan stock is an overissue, there are fifty shares somewhere that we have no account of. All that I have knowledge of is at—

Ashland,	443	shares.....	$44,300.00
New York,	250	"	25,000.00
Circleville,	50	"	5,000.00
Mechanicsburg,	60	"	6,000.00
Mr. Hunt,	9	"	900.00
			$81,200.00

This makes the exact number of shares standing in my name on the books. If another fifty shares have been hypothecated I have no notice of it, which makes the matter incomprehensible. Edwards Co.—when the subject was first before us—conjectured that any missing certificate would be found among De Camp's papers. It was not among mine, and if it had been hypothecated, don't see why I have had no notification and a request for either principal or interest. When in Cincinnati please have your correspondent have 1,000 fcs. cabled to C'tese d'Adhemar, 10 Rue Lesner, Ave. du Bois de Boulogne, Paris.

As soon as I can get myself in a little better condition will go to work and straighten out these accounts. If any one should ask you for a statement before we are ready, you can say that I left securities, and this business in your hands, but that you would not undertake

to separate them and make settlements without my assistance, etc., etc.

Maggie is well and seems to enjoy herself. A telegram from Aunt Mag. assures us her safe arrival home. God bless you.

Affectionately, WILLIAM.

EXHIBIT 15 (2).

The check for $350 by Frank Huntington is on account of the mortgage note of his deceased father H. D. Huntington 10 M well secured by Cincinnati property. The buildings on the property are to be kept secured for the benefit of the mortgagee, which it would be well to inquire into.

WM. M.

158 Q. 1205. October 22, 1888, William writes "I enclose herewith some papers, including the promissory notes you asked for." What notes were those?

A. I can't tell from recollection (examines letter), if I had father's book I think I could tell it. (Examine Journal B.) I think the promissory notes mentioned was William Means' note dated the 20th of August, 1888, at one day in favor of Thomas W. Means for $5,041.67, another note dated the 25th of September, 1888, at one day, $7,400, entered on page 192, Thomas W. Means' book, Journal B, 24th of October, 1888. I think those are the notes that are mentioned in that letter.

Q. 1206. For what were those notes given?

A. Given for payments made which had been charged on William Means' account current and which amount is credited by bills receivable for the note.

Q. 1207. What other papers were included, if you remember, in reference to which William Means says here, "The others may be useful for reference"?

A. I cannot recollect what papers they were—letters or what—I can't recollect.

Letters of October 22nd not offered.

WITNESS: Now I think I can answer that. $5,041.67 was for payments to the Bank, I think, of Circleville, Ohio, entered on page 189 of Journal B. This $7,400 note was amount remitted to George Gerke, 25th of September, I think it is, entered on page 191 of Journal B.

Letter of October 25th, 1888, produced and handed to counsel for complainants.

Q. 1209. Mr. Means, this letter of October 25th, 1888, contains a statement of the amount of the Labrot estate. I believe you testified in this record already the amount paid by your sister Margaret to adjust that matter, have you not—about $54,000?

A. I stated approximately; yes.

Q. 1210. This letter, I believe, states the amount to be seventy-three or seventy-four thousand dollars, which after deducting the

two securities of ten thousand dollars each leaves a residue of fifty-three or fifty-four thousand dollars to be paid?

A. Yes, sir.

Q. 1212. Is that $500 on account of fees?

A. No, sir; not as an attorney fee for a trial. It was, I think, the payments that he wanted to pay either to Mrs. Means or for the family or something of that kind. Mr. Hunt once proposed
159 to render an account to me between Hunt and William. I cannot tell what letter, but I think you will find there was a request in some letters that we might not have offered. I think there was some that have been offered in which you will find a request for remitting $500.

Q. 1213. "October 24th, 1888. My Dear John: Yours of twentieth just received. I note the payments you have made on my account and send you note accordingly, *i. e.*:

To Samuel F. Hunt, my account	$500
George Gerke	1,500
	$2,100

Please find my note this date to order of Thomas W. Means payable one day after date for $2,100."

A. He is credited on the 29th, page 183, Journal B.

EXHIBIT 16.

Cincinnati, Feb'y 15, '93. B. Perin, Sp. Ex.

MARCH 26TH, 1888.

John Means, Esq., Ashland, Ky.

DEAR JOHN: Yours of 21st came duly to hand, but I did not feel well enough to reply. Have requested Mr. Hunt to obtain a list of all obligations and collaterals which will be sent you as soon as received. The Findlay papers are, I believe, in De Camp's hands, and I do not know whether we can get information from him as to obligations in that respect, though I suppose we shall obtain due notice in the regular way. The Circleville people had been written to that I would ask their indulgence until after my present difficulties are settled, and hearing nothing further supposed they were willing to give me time as others have. I don't believe in making any settlements on the outside at present, but wish to stave them off till we can see our way better as to which course to take. I don't remember exactly what evidence we have as to Findlay interests. De Camp kept all the accounts. The Toledo property is owned by Granger & Hunt, not Samuel F., attorneys, Cincinnati, De Camp and myself, four of us sharing equally, and the investment is considered a profitable one.

Mr. S. F. Hunt came up yesterday, and left today to employ either Channing Richards or Warner M. Bateman, formerly district attor-

neys, to consult with Mr. Baker and himself right away as to
160 some important action on my behalf. I cannot say on paper what it is, but wish you would call on either Baker or Hunt when in the city, for particulars, as they may desire to consult you. Please send me here by express $2,000. I suppose that Mollie and Rose have reached home by this time, and ask you will give them as all other members of both families my love.

Yours sincerely, WILLIAM MEANS.

Q. 1221. Are there any letters referring in any manner to transactions that had been made or were to be made by you in behalf of your brother William Means, or in his interest?

A. I think so. Some of them requested me to send him money.

Q. 1231. In the letter of June 1st, 1889, your brother wrote you, did he not, "The General (referring to Gen. Samuel F. Hunt) had my instructions about stopping the payment of the $75,000 some time ago. Baker called to see me on Monday last and promised to enjoin it on reaching home, if not given up peaceably." That is what he wrote you, is it?

A. That is William's writing addressed to me.

Q. 1232. And I have read correctly what he wrote?

A. Yes, sir.

Letter of June 1st, 1889, considered not relevant except the matter referred to, and is not offered.

Letter of July 2nd, 1889, furnished by witness to counsel; not considered relevant.

Letter of September 5th, 1889, produced and laid aside for the present.

Letter of March 3rd, 1890, produced; not offered.

Letter produced of March 30th, 1890, requesting remittance of money for defraying expenses of the schooling of his daughter Patty.

Q. 1238. I understand you to have testified that you have received no letters from your brother since the death of your father. Am I correct in my recollection about that?

A. I don't think I have received any from him since.

Q. 1247. Now, the $125,000, as I understand it, which you paid was to satisfy William Means' individual indebtedness to the bank other than his obligations as a member or syndicates; that is correct, is it?

A. No, I think not.

Q. 1248. Well, what individual indebtedness was there to the bank other than that?

161 A. McConville, the agent, claimed indebtedness through the indebtedness of corporations that he was interested in, in some of which, I think, the stock had not been paid up, or liability under the Ohio law, or something—liabilities coming in that way. The $125,000 was what Mr. Sanders claimed for personal debt individually.

Q. 1263. Was there any written statement signed by yourself and

McConville, or signed by McConville, as to the terms upon which that deposit of $75,000 was made?

A. None but the receipt which he gave me.

Q. 1264. Where is the receipt which he gave you?

A. I have it.

Q. 1266. You have it here in the city?

A. Yes. I will be governed by their advice.

Witness consults with his counsel, after which he produces to counsel for complainants the receipt, which is offered in evidence, marked "Exhibit 17. Cincinnati, February 16, '93. B. Perin, sp. ex."

Copy of said exhibit is as follows:

EXHIBIT 17.

Cincinnati, Feb'y 16, '93. B. Perin, Sp. Ex.

CINCINNATI, OHIO, *November 1st*, 1888.

Received of John Means, Esq., $75,000.00. In receiving this amount I am to hold it in trust for said John Means, Esq., until the Attorney General of the United States has passed upon the application to direct a discontinuance of the criminal cases now pending in the United States circuit court, S. O. D., against William Means; or until the President shall pardon him before trial; which application is to be submitted without delay, and a determination arrived at.

In the event that the Attorney General does not direct a discontinuance, or the President refuses a pardon before trial, then the above amount to be returned to John Means, Esq. But in the event that the criminal cases are discontinued, or a pardon granted by the President before trial, and said sum of money to be applied to any liability which may have accrued by reason of the connection of William Means with said bank as president or director thereof, and paid by me into the assets of the Metropolitan National bank, for the benefit of the shareholders thereof. It is understood
162 that the agent of the Metropolitan National bank yields no civil rights which he may have against William Means.

In the event of a refusal to discontinue the cases, or the refusal to grant pardon before trial, then the money to be returned to John Means, Esq.

JAMES McCONVILLE,
Personally and Individually.

Q. 1268. What was the matter of difference in regard to the wording of the receipt?

A. Well, I can't recollect what their first form was. It was submitted to Mr. Hunt and they wanted me to pay in the $75,000, just into the bank without reference to amount of debts, and I would not do it. I think that was in the afternoon and we talked until nearly night and called Hunt by telephone and finally adjourned until next morning and then this final agreement with the interlineations there was agreed on.

Q. 1270. The Hunt that you refer to is Judge Samuel F. Hunt?

A. Judge Samuel F. Hunt, and the attorney for the bank was there, William B. Burnet; he was the district attorney at the same time. He was the bank's attorney.

Q. 1271. In whose handwriting is this interlineation which reads "Any liability which may have accrued by reason of the connection of William Means with said bank as president and director thereof"?

A. I don't know. It is not Hunt's. I think that is probably Burnet's or Paxton's, but I do not know. They would take that and go off, two or three of them together, and sometimes one, and finally Hunt agreed to it with that interlineation.

Q. 1272. Who wrote this "Personally and individually" in pencil?

A. McConville. They wanted that it should be paid to McConville as agent and I said that that would put it into the hands of the bank and I might have to bring a suit to get it out and he put that there and said that that would make it plain.

Q. 1311. One hundred and seventy-five shares of stock of the Means & Russell Iron Company, par value $1,000, appraised at $800 per share, $140,000. Did you hold any of that stock at the time of your father's death?

A. I never held any.

Q. 1312. Never held any at any time?

A. At any time.

163 Q. 1313. 41 shares of stock in the Little Miami Railroad Co. Did you hold any stock in that company?

A. Never did.

Q. 1316. 70 shares of stock in the Portsmouth Gas Light Co. Did you have any stock in that?

A. Never had.

Q. 1336. Mr. Means, in your examination, when I was asking you about your account, which is attached here as Exhibit 2, being your personal account against William Means, you stated that those items that were paid there were a donation upon your part, that you charged it to him, but that you did not consider it worth anything, but in response to my question if you are not now seeking to collect it in this action, your answer is, "It was his own proposition to make that, as I understood." Now please explain that, what that proposition was? What was that proposition? What did you refer to there?

A. The proposition to pay. I kept an account of what I paid for him, but I did not consider that a debt against him would be good and I understand he proposed to give an order on the administrators to pay it—I understand that was his proposition—in case there was anything coming to him beyond the amount that they had settled for.

Q. 1337. Do you understand why—what the purpose was?

A. He wanted to pay all I had paid for him.

Q. 1338. That is what you understood was his purpose?

A. That is what I understood was his purpose.

Q. 1339. Was not his purpose this, as you understood it: that an

arrangement was made between the executors or administrators and your brother William by which they figured up this amount of one hundred and thirty-six thousand dollars and he agreed to give his receipt for that one hundred and thirty-six thousand dollars on condition that these amounts which you had paid and which his sisters Margaret and Mrs. Adams had paid, should be all figured up and interest added in, and that receipts be given and orders be given by him to the administrators for those amounts and the administrators to give him that money and you and your sisters to surrender your claims in his favor; wasn't that the understanding?

A. I had no such understanding.

Q. 1340. That is not the question. Was not that the sug-
164 gestion as made by William Means and under which a bond was delivered?

A. By the administrators?

Q. 1341. By any one.

A. No.

Q. 1342. You have not?

A. No, only so far as you people charge it. I had not any such understanding.

Q. 1343. Then, so far as you know, the only object of William Means in giving that order, and the only purpose, was that he would give you an order and his sisters an order for whatever should be left of his estate to pay that amount, if anything was left, out of his estate, after the hundred and thirty-six thousand dollars was paid, and that it was all gratuitiously done by William Means without any expectation of benefit to him?

A. It was not a gratuity because it was a debt that he owed.

Q. 1344. There was no expectation upon his part, so far as you know, of any personal benefit?

A. I can't tell what his idea was.

Q. 1345. So far as you know?

A. I have not seen William Means since father's death or for some time before. No such proposition was made to me, nor did I agree to pay. If the administrators made any such agreement, they made it without my knowledge, or consent either.

Q. 1346. Wasn't there an understanding between E. C. Means as administrator as your representative, with William Means, with Mr. Charles W. Baker and Mr. Evan F. Williams, that if William Means signed the receipt for one hundred and thirty-six thousand dollars, that then these receipts for these two amounts, which would aggregate about twenty-six or twenty-seven thousand dollars, the exact amount being twenty-six thousand two hundred and forty and seventy nine one-hundredths dollars, and that those three receipts were to be turned over to you and your sisters respectively, and that the money was to be paid to William Means?

A. Neither Adams nor Cook have ever told me that there was any such understanding between them, if there was any such understanding. Cook says positively that there was no such understanding.

Q. 1357. You never have heard of any transaction?

A. I don't know when it could have occurred.

Q. 1358. This is October 18, 1890?

A. I was not in Ashland at that time.

Q. 1359. Did you ever know of any such transaction?

165 A. I have been told William's proposition and I think Cook——

Q. 1360. What were you told was William's proposition?

A. Proposition to give this order on the administrator for the payment of these amounts, or this amount to me, and I understood it to the others too, and I think that they had a paper prepared that if this amount should be found due him in addition, but if it was not found due him, if there was any payment made to me it would be returned from me to the administrators and if—I think that I probably signed a paper of that kind. It was a question as to whether there would be anything due him beyond.

Q. 1373. Except as you know them, as you have been made acquainted with them?

A. I did not see Mr. William Means and have not seen William Means since '88 and I think I furnished you all the letters I had from him since he returned and before, as far as I know.

Q. 1391. At the time that receipt of twenty-six thousand dollars was given, do you know anything about the manner in which the amount of that was arrived at? Were you ever told by your son?

A. What is the date of that receipt? If you can refer me to the date of it.

Q. 1392. October, 1890.

A. Well, what date? You have referred to it two or three times as though you wanted me to fix the date, and I don't know.

Q. 1395. Were you ever told, then, that it was suggested by the representative of William Means that that amount be made as large as it could be, that he was to get it anyhow?

A. Made by whom?

Q. 1396. Why, in making the computation for that receipt over and above, or receipt to be given in addition to the one hundred and thirty-six thousand dollar receipt, that that be made as large as it possibly could be and that everything be figured into it that could be figured into it?

A. That who proposed that?

Q. 1397. The representative of Mr. William Means to your son.

A. I never heard of any such thing. Cook showed me the amount that they proposed to return to him and it was not as large as my account showed it was he owed me.

166 Q. 1398. You never heard, on the first statement as prepared by your son, that it was about eighteen thousand dollars?

A. To me?

Q. 1399. No, to all three, and that it was subsequently, by subsequent calculations, raised to twenty-six thousand dollars?

A. No, sir.

Q. 1400. You never heard of anything of that kind?

A. I never heard of any such statement. It is not true, either.

Q. 1401. At the time that this transaction was made, did you not know that there was then talk of, or threat of, proceeding by Mrs. William Means against her husband for alimony and for the support of the family?

A. It would be hard to tell what Mrs. Means has threatened. I have heard almost everything from her in regard to the estate and myself and sisters and she would give us all the trouble she could, but as to any particular statement, I can hardly——

Q. 1402. Now, Mr. Means, be kind enough to answer the question.

A. I have answered it.

Q. 1403. Question 1401 repeated.

A. You see you were asking me as to the suit against him; I had never heard of any such suit.

Q. 1404. Do I understand you that at that time William Means had not himself communicated to you that Mrs. Means was threatening to institute proceedings against him for support and for maintenance; had he not so stated?

A. I have no recollection of his ever writing me any such letter. If he did, I don't think I ever received it. I have no recollection of any such letter from him.

Q. 1405. No recollection of ever having received any such information from him?

A. I could only have received it by letter if I had received it.

Q. 1406. Had you received any information from Mrs. Means that she was at that time contemplating a proceeding against her husband for maintenance which she expected to secure out of your father's estate?

A. I had nothing from her for, I think, more than a year before my father died, or about a year—no communication from her.

Recess until 2.30.

167 THURSDAY, *February 16th*—2.30 p. m.

Q. 1407. With regard to these reclamation bonds, did you make that purchase, Mr. Means?

A. No, sir. I did not have anything to do with it. I did not know it was done until after they bought them.

Q. 1408. That, you say, was in '72?

A. I think so. The book will show when it was.

Q. 1414. During the time of William Means' absence and during the time that you were converting these securities and attending to business for him, in so far as you were attending to business, did you not represent to his wife and daughters that provision would be made for them and that there would be abundance for their provision and support?

A. I don't think I did just in the words you have stated. My idea was that I could not tell how much there might be to come out of the estate but that I and my sisters felt kindly towards them and that we would help them. That is about according to my recollection now.

Q. 1415. Didn't you say to them that so long as you and your sisters Margaret and Mollie had so much more than you needed, that they would not be permitted to want and would be provided for and that you expected also to realize enough from your father's estate to provide for them, or something of that sort?

A. I cannot recollect now all, but I may. I know I felt, and my sisters felt, like trying to help them, but just the terms in which I stated that to them I cannot recollect now.

Q. 1416. Didn't you, when your niece, Miss Pearl Means, was intending to go upon the stage to provide for herself, didn't you then hold out the inducement to her not to do so, that there would be ample provision made, and request her and her sisters to remain at home with the father and mother, and that you would see that ample provision was made, or to that purport?

A. I don't think I said or wrote to her at the time she went on the stage at all. I have no recollection of writing to her. I did not see her for some time after.

Q. 1417. Didn't you write to another member of William Means' family requesting them to communicate that to her?

Testimony objected to as irrelevant.

—. I think I wrote to my sister. I may have written something of that kind to her mother.

Q. 1418. To Mrs. Means?

168 A. Yes. It is pretty hard for me to give from recollection a letter of four years ago or more.

Q. 1419. I will ask you if that is your letter, written by you to your sister-in-law, Mrs. William Means?

A. Yes, sir. That is the letter of the 16th of August, 1888.

Q. 1420. In this letter you say "As to Pearl I think if she persists that she is making a very serious mistake, the mistake of a lifetime. So long as her aunts, Mary, Maggie, Hattie, and myself have so much more than we need, she nor your other daughters need fear but that all will be cared for;" that is correct, is it?

A. Yes, sir; that is my opinion.

Q. 1421. That is what you wrote?

A. That is what I wrote.

Q. 1422. Who is meant by Hattie? Is that Mrs. John Means?

A. That is my wife.

Q. 1423. And then in addition to that: "Besides I have hopes of saving enough for all from the wreck of his father's estate yet."

A. That is "her" father, isn't it?

Q. 1424. I don't know what it is. What is it?

A. Her. It seems to have been written with a dot there as though it was changed from his to her. The reference was to her father's estate.

Mr. GLIDDEN: I will offer this letter in evidence.

Letter marked "Exhibit 18, Cin'ti, Feb'y 16, '93. B. Perin, sp. ex."

Copy of Exhibit 18 is as follows:

EXHIBIT 18.

Cincinnati, Feb'y 16, '93. B. Perin, Sp. Ex.

ASHLAND, KY., 16*th August*, 1888.

MY DEAR SISTER: Your two letters dated 6th instant, were handed to me Tuesday, 14th, by Mr. Hunt. We saw Mr. Gilmour and desired to empty the safe, but he, G., could not find the combination to open, and we have written Will. to send it to Hunt. From collateral evidence I hope the contents of the safe are all right, although at first was a little uneasy when Mr. G. failed to open for us. Am expecting to leave Saturday for N. Y. city
169 reaching Lily's Tuesday morning 21st. Shall be engaged with Low Moor business two days and after that devote a few days to Will. and Maggie.

As to Pearl, I think if she persists that she is making a very serious mistake, the mistake of a lifetime. So long as her aunts, Mary, Maggie, Hattie, and myself have so much more than we need, she nor your other daughters need fear but that all will be cared for. Besides I have hopes of saving enough for all from the wreck of her father's estate yet. Please say to Gertie and Pattie this, and write to Pearl that I desire and request herself and her sisters to stay now with father and mother and not to desert, in time of greatest trouble and need.

Hoping that I may see Pearl while in the city—with love to yourself, Gertie and Pattie.

Affectionately your JOHN MEANS.

Q. 1426. You were practically for some years the business head and manager of your father's family, were you not, looking after the interests of your sisters?

A. I was largely the manager and adviser of my two sisters.

Q. 1427. And the confidential adviser, as you have stated, of your father?

A. Of my father.

Q. 1428. Now, Mr. Means, your individual account, Exhibit 2, and the books of Thomas W. Means, show all the amounts that you at any time let William Means' family have, does it not? I mean that you let them have after the failure of the Metropolitan bank?

A. I think so.

Mr. Glidden offered in evidence, letter as Exhibit 19, copy of which is as follows:

EXHIBIT 19.

Cin'ti, Feb'y 16, '93. B. Perin, Sp. Ex.

Answered 18th.

JULY 12TH, 1888.

DEAR JOHN: Please to find check of Frank Huntington on Nat. Lafayette Bank Cincinnati for $350, endorsed to your order. It

belongs to the heirs of H. Labrot, and is for 6 mos. interest on a mortgage note of 10 M. Aug. 1, there will be $350 more from L. &
B. S. coupons, but this will leave me short, and I wish you
170 would on receipt of this have your banker cable 7,000 fcs. to
Emile Seigmouret, Bordeaux, France, which will be a little less than $1,400. I think it will save me trouble if this is done promptly, as I said that I would remit interest at the middle of the month. Now John, this will only add to your burdens, already too great, but I have no one else to go to, and excepting for the trouble it is to you would wish no other confidant. When the bank troubles came on us, almost all this trust was swamped with everything else. I had intended holding everything I had, and everything that might ever come to me as sacred to this trust, but felt compelled to surrender with other directors such things as we handed to the examiner in order, if possible, to stave off the coming calamity. When the crisis came, my only thought of help in this was through you and father, but had not collected myself sufficiently to act, when you suddenly paid in the 126 M and frightened me still further as to this trust. Since then, I have endured constant agony, the matter never being absent from my thought during the day, and in my dreams and waking moments at night. Even now it is with the greatest effort I make up my mind to give you this confidence which I have been endeavoring to do from the beginning. One reason for coming away from home was to gain strength enough for this and try and make up my accounts with that estate. I am stronger and feel better, but am not well and have some unfavorable symptoms, but really don't know whether I am better or worse. There is no doubt that I am injured by constant brooding over my calamities, and can't have any permanent improvement until I can see some of the clouds removed. Of this trust I saved only 20 M, consisting of mortgage note 10 M and L. & B. S. bonds 10 M. The balance, for which I have nothing, will be probably a little more than 50 M and without your help I don't know what I could do to help myself. I have brought with me books and memoranda that will enable me when able to work to arrive pretty closely to the exact figures. Of course you cannot be expected to go to work to raise the amount of my shortage and pay it off at once, as this would be too much burden for you to attempt for the present, but you could prevent any uneasiness by allowing me to inform the heirs that I have placed all their affairs in your hands where they will be safe, and be straightened out as soon as my troubles with the Government are settled. That of course you don't understand them, but will preserve everything and remit interest until
we can get opportunity to have the accounts made
171 up accurately and ready to turn over to another trustee,
which will be as soon as possible. This is the nature of the assurance I wish to give them, and its neglect might place me in a more serious position with them than the Government. It will also give me some peace of mind, which I very much need before I am fit for any useful work. I am also going to ask you to keep this as much as possible in confidence between ourselves—particularly

with regard to my own family during my lifetime. It is sufficiently hard to ask you to share this burden of responsibility and confidence, and any additional relation of it will only add to my humiliation and misery. I rely so much on your sense and heart, that I find some relief in coming to you with this great trouble, in which you seem to be almost a parent as well as brother. And you cannot imagine the sense of relief I should experience if I could feel that this additional weight will be lifted off me. I have nothing to offer you in return but gratitude and brotherly love. I have nothing to tempt you with, but there may be in the future something I can do for you or yours that cannot now be conjectured, and this is my hope. Words are inadequate to express my feelings, but I can never forget your labor of love. Col. R. L. Bright is in N. Y. and will be here in a day or two to consult about the disposal of Roan Mountain stock, in which I trust he may be of help in this trouble.

Maggie, who is goodness itself, is enjoying herself quietly here, and I should hate greatly to disturb her with this trouble. I wish particularly that neither of the attorneys should know anything of this trouble. I now have an opportunity to send this to N. Y. and close in haste while I remain

Affectionately yours, WILLIAM MEANS.

Q. 1429. At the time of the failure of the bank you had charge of the means and investment belonging to your sister, Mrs. Margaret Means, did you not?

A. Largely. She was with me or near me and I generally advised her on anything that I bought for her, before buying—anything that I did for her.

Q. 1430. Is that true also with regard to Sister Mollie? I believe that is Mrs. Adams.

A. Not so much so. When her son was at home they managed their own affairs more and I had not so much to do with
172 their affairs as with my sister Margaret, though I was always ready and willing to help her also and do anything for them.

Q. 1431. Mr. Means, I have in my hand a letter of William Means in which he makes this statement, written to his family: "My poor sister Mary, ever faithful, declines to go home as expected and has probably offended through her declared intention to stick to me to the end. She also is unable to command her own money and is constantly seeking to obtain some so we may find a cottage for herself and her children and await results." Now, was there such a condition as that it was difficult for her to get her moneys from you at that time and that she had probably offended you by her adherence to William?

A. No; there was not.

Q. 1432. This while they were at the seashore. There is no date to it?

A. Well, my answer referred to the spring and summer of '89 when they were there.

Q. 1433. Was there such a condition then, so far as your man-

agement of affairs and connection with them was concerned as to justify the following advice then written by William Means to his family as I have it here: "Don't send the children while I have no money unless you want us to beg. Hold on to everything, give nothing up and make the best of it you can for yourself and the children and let me pass out of sight." "I am unwilling that Mary should bear the whole burden the coming summer, but John makes no sign and General Hunt, his friend and counsel, gives no hint." Was there any such situation as justified the sort of advice of William Means to his family by reason of your conduct?

A. There was not. I testified yesterday I sent them three hundred dollars on receipt of request from him and I think that is the only request he made from me that summer until after I went home.

Q. 1434. Here is a letter I have in my hand dated Tuesday night, November 13th. It does not give the year. My judgment of the contents is that it was probably in '88. It is to his daughter, from William Means. He states: "Well, in order that you may come to a correct understanding now, my dear daughter, your good kind letter came this morning. Your aunt Mary read it and has everything good to say of you as she has also of your sisters. Your aunt Maggie is always asking after you and says you are a born nurse. She thinks you could come to see her when the Judge is not here if you are not afraid of taking cold. Your uncle
173 John wishes her to go home as soon as she is able to travel and told her he would send Rose to take care of her not only during the trip but for the short time before starting, and she don't want Rose and she will leave for New York as soon as she can get away from here. I am now satisfied that your uncle John is afraid of my influence over your aunt Maggie and desires to remove her from that influence as soon as possible." Is that statement correct, Mr. Means?

Mr. MAXWELL: We object to the question as irrelevant and improper.

A. It is not true that I wanted to get Maggie away from his influence. She was sick from the typhoid fever and was proposing and it was suggested, as I stated, that she should come when she was able to.

Q. 1435. He has already stated that he believed she would sacrifice her entire portion for me, "which would not be right and which he would not permit." Did you make such a statement as that?

Objected to as irrelevant.

A. I won't undertake to say now.

Q. 1436. Then I will call your attention to the next statement. "He (referring to yourself) is anxious that she should make her will, but don't want her to do so until he has her safe at Ashland."

A. That is not true.

Q. 1437. "She lives in awe of him, but it is becoming evident

that she is doing some thinking for herself." Is that correct? Is that the condition of things?

A. She did not live in awe of me. She always thought some for herself. If she lived in awe of me, I did not know it.

Q. 1438. Then there is the following statement: "She (referring to Mary or Maggie, I don't know which) has been worrying about me during her entire sickness. You can understand why he (referring to yourself) is so anxious to take her home and have her as much as possible under his own influence. It is a plain case." Was there any such condition as that?

Objected to.

A. It is not true, absolutely.

Q. 1439. Then, he says "Your aunt Mollie tells me everything and is decidedly opposed to your uncle's methods and don't hesitate to say so." Is that correct?

174 A. I have no recollection that Mollie ever wrote to me that she was dissatisfied with anything that I done.

Q. 1440. Is it true as here stated by William Means that she is "decidedly opposed to your methods and don't hesitate to say so"?

A. I have said that she never said so to me. She was away at the time is the reason I say "wrote." She was with him. Of course I could only know by writing. Her letters to me were always kindly. I think then she would have trusted me with anything.

Q. 1441. Is it not true, Mr. Means, that for years you have been the controlling spirit in that family and have directed and controlled the members of that family in their financial and other matters as you dictated and directed?

A. No. It is not true.

Q. 1442. Mr. Means, do you know anything about a paper executed by William Means and sent to the administrators revoking a former paper executed by him?

A. What paper?

Q. 1443. Any paper of revocation of former papers relating to his father's estate?

A. I don't know of any. I have not seen any. I don't think I have been advised of any by the administrators.

Q. 1444. Were you advised by the administrators of any paper executed by your brother William when Isaac Jordan was there, and served upon them, revoking papers that before that time had been executed?

A. I don't know when Isaac Jordan was there and I don't know of any revocation by him.

Q. 1445. Of any paper?

A. No.

Q. 1446. Have the administrators of your father's estate conferred with you in regard to an advertising now being made for the sale at the Ashland National bank of a large amount of stock to take place at public auction on the 15th of March?

Objected to as irrelevant.

A. My son showed me advertisements that he was writing—had written, and he showed the advertisement in the newspaper published in Ashland. He said that he proposed to advertise it in other papers.

Q. 1447. Did they, or either of them, confer with you about it before the advertisement, about the advisability of doing it?

A. Well, they did talk to me a little something about it to
175 know my opinion and I told them I could not advise them, that that was a matter of the administration that was to be governed by the advice of the lawyers, that it was a legal matter and that I did not feel competent to advise them about it.

Q. 1448. And you did not advise them to advertise the stock to sell it?

A. No. It was not my advice. They came to the conclusion themselves, I think. They may have advised with the attorneys and they talked to me what I thought about it but I could not tell them what was best to do.

Ex. 20 (Offered Only to Mark Near Bottom).

Cincinnati, Feb'y 13, '93. B. Perin, Sp. Ex.

APRIL 16TH, 1888.

MY DEAR JOHN: In looking over my affairs I find it hopeless to attempt any further payment of liabilities, except interest for a while to hold off civil suits. Among our loans, each of the syndicate of five have 20 M borrowed from the U. S. National N. Y., on which we pay at the rate of 4 % per annum. Of additional loans I have Circleville 5 M, Farmers' bank Mechanicsburg 6,000 M, Georgetown 7 M, unknown 5 M, making in all 43 M. The U. S. holds Metropolitan stock at 80c. or 25 M as collateral. The others Metropolitan stock at par, or 48 M in all, which cost about 63 M. It is impossible yet to know with any accuracy what the stock will realize; but to reduce its value to 50 % on the dollar, about 700 M will have to be thrown away as lost, and it seems to be good policy to wait and see what will come of it. Mr. Hunt was here yesterday, and said that Col. C. W. Woolley, who has just returned from Washington, urges that Mr. Richard Smith should go there at once, and secure the influence of Senator Sherman for further delay or indefinite postponement.

Q. 1455. Don't you account for the proceeds of that in this statement?

A. We have got none from it. If it was in relation to anything to be made out of it, it was something to pay—he owed on it. The certificates of the Metropolitan National Bank stock—they were not returned to him.

Q. 1456. Where are those certificates?

A. They are in Ashland.

Q. 1457. Who holds them now?

176 A. They are not among my papers, I think. I considered that they belonged with the notes, and when the notes were

surrendered, they were returned to William. I made no attempt to draw any dividend on them. I have drawn no dividend since.

Q. 1459. Mr. Means, will you produce those certificates here?

A. I can send them from home. They are not here. Anything else that I have, I am perfectly willing to produce it.

Q. 1461. At the time of your father's death, wasn't your personal estate equal to or greater than the estate of your father?

A. No, it never was.

Q. 1462. Your personal estate was a very considerable estate at the time of your father's death, wasn't it?

A. Yes, sir. I had worked for forty years and always tried to live within my income and had accumulated some.

Q. 1463. Have you any objection to stating how your estate compared as to value with that of your father, his being appraised at $750,000?

Objected to.

A. I don't care about making an exhibit of my affairs to everybody.

Adjourned to February 17th, 1893, 10 a. m.

FEBRUARY 17TH, 1893—10 a. m.

Testimony of JOHN MEANS continued by Mr. GLIDDEN:

Q. 1463. I want to ask you if what I read is a correct description of your father's condition in the spring of 1888? "He is able to be about, but is so restless, requires constant care and one to answer the same questions over and over." Is that correct as to his condition then?

A. It was some days, yes, sir.

Q. 1464. "Charles, your brother, said he hadn't laughed so much for a long time as he did when here Monday at the questions father deluged him with, such as where were you born? When were you born? What do you follow?" Was that his condition at that time, that he would ask a person he had known always those questions in that manner?

A. No, I don't think he would ask that of a person he knew always.

Q. 1465. Had your father not known Charles Campbell from his childhood—the son of John Campbell?

177 A. Well, I don't know how much he had known him. He had known most of Campbell's children, I suppose. How intimately, I don't know.

Q. 1466. Charles Campbell was the son of John Campbell?

A. Charles Campbell, if that is the Charles referred to—I don't know.

Q. 1467. "He doesn't sit quietly only a few moments, wants to be taken into the other room and to where his bed is, so he can feel it, see if it is still there." Is that a correct statement at that time; was that his habit?

Objected to as being an effort to incorporate unverified statements

purporting to be made by persons who are not witnesses, into the record in this way.

A. No, I don't think it is.

Q. 1468. "Has commenced to smoke again, and we no sooner get the pipe filled and light it, than he blows the tobacco out or turns the pipe over, and then wants it refilled." Is that a correct statement?

Same objection.

A. It was true that he was troubled a good deal with his pipe after he became blind.

Q. 1469. Question 1468 repeated.

A. I don't know but what that might have happened and might not, as a habit.

Q. 1470. Can you tell me in whose handwriting the letter is that is now shown you, Mr. Means?

Objected to as irrelevant.

A. That is Mrs. Adams'.

Q. 1471. It is the handwriting of your sister, Mrs. Adams?

A. That is right. It is not dated at all anywhere.

Letter offered as Exhibit 21, copy of which is as follows:

EXHIBIT 21.

Cincinnati, Feb'y 17, '93. B. Perin, Sp. Ex.

THURSDAY MORNING.

MY DEAR MARTHA: Glad to have both your and Gertie's letters. Charles was here Monday and said he would send you a plat of the cemetery from which you can probably make a better selection than he and Maggie could, or would be willing to make at the cemetery.

178 Father is not quite as well as usual, been having chills, is able to be about, but is so restless, requires constant care, and me to answer the same questions over and over. Charles, your bro., said he hadn't laughed so much for a long time as he did when here Monday at the questions father deluged him with, such as, Where were you born? When were you born? What do you follow? He doesn't sit quietly only a few moments, wants to be taken into the other room, into the hall and to where his bed is, so he can feel it and see if it is still there. Has commenced to smoke again, and we no sooner get the pipe filled and light it, than he blows the tobacco out or turns over the pipe, then wants it refilled. Tom is at present reading the Ashland paper to him—doesn't care for any reading but the papers. We couldn't well leave home now. Do hope my brother will be able to walk or drive out and have some change. My heart aches when I think of him which is the greater part of the time. The letters to John I sent down to his office with Tom, without reading them. He came in in the evening and gave

them to me to read; if you want I should read them you can write so in them. John was in last evening, but Rose and Harry were with him—it is rather difficult to see him alone. Rose has been in since I commenced this letter, telling us Bessie has another daughter born last night, weighs 10 lbs. Inclose Mary's letter. Do hope Jim will get well and live fifty years. Anything new about Europe let me know—glad to have a line any time. With warmest love to dearest brother, nieces and yourself.

MOLLIE.

Q. 1472. Mr. Means, I want to ask you one question about a letter here that you have been examined about, but not about this part of it. In your letter of the 18th of July, 1888, did you not say to William Means: "I am glad you have written as to the amount of Labrot Trust, since it shows me what must be prepared for and if not to be paid in a short time with aid your sisters can give, and I know both are willing, we can settle it up and get off of our hands." Did you so write William at that date?

A. That is my writing.

Q. 1473. You so wrote him at that date?

A. Yes, sir.

Mr. GLIDDEN: That is all I know of. Something may occur to us that we may want to ask Mr. Means further and we may want to introduce some additional letters, but not that we know of.

179 EXHIBIT 22.

Cincinnati, Feb'y 17, '93. B. Perin, Sp. Ex.

YELLOW SPRINGS, *Sept.* 5, 1889.

MY DEAR JOHN: Cook, McConville, Burnet and Warrington duly arrived in Craigville last week, and after I had communicated with Mr. Hunt to learn whether he was cognizant of and approve what was going on—of which I was soon assured, I came out with Mr. McConville reaching here Monday last. It is my opinion the move was a good one, though I have no information on the subject other than that referred to. I found no communication of any kind awaiting me, nor do I hear of any action or plans in my behalf other than that contemplated by the bank's representative and Mrs. Means. She is without money and in debt in every direction for necessaries, making a condition which has excited sympathy and probably much feeling on her account through this section and in Cincinnati. My presence here and the attorneys and visitors in consequence will increase the expenses, and the situation becomes embarrassing. She thinks her debts will amount to about $1,000. I think you will agree that it is very desirable they should be paid off as soon as possible. I do not claim to be able to control the situation which I greatly deplore, but it is my conviction that every day of this condition only adds to our troubles, and I hope to hear from you at once. Our expenses are down to the minimum, but we cannot live altogether on vegetables and hope.

Also, the action of Burnet and McConville in securing a Republican associate—Warrington—for the interests of the bank convinces me that I should ask my attorneys for a similar privilege, and I would then bring Mr. John Little, of Xenia, if he can be obtained, into the case, to do much that cannot be otherwise accomplished. I recommend this partly in view of the fact that the representatives of the bank are relying mainly on such aid and support as they can get from him and my wife, and I hear of no other efforts, but she has no funds to send him to Washington or anywhere else on my account, and he cannot work and travel for nothing. It is but a short time till October and everything is yet to be done, and there can be no excuse for delays or neglect on my part, or of those acting for me. I desire very much to be authorized to associate Mr.
180 Little with counsel, as the best factor we have yet had, though not in the case. Hoping that you continue to improve and may soon be well I am in haste and affectionately,

WILLIAM.

(Copy.)

To the Boyd county court, Boyd county, Ky.:

The undersigned, appraisers of the personal estate of Thomas W. Means, deceased, appointed at the July term of court, 1890, and being sworn before acting, faithfully to discharge the duty assigned to us to the best of our judgment, report the following as our appraisement of such estate as was exhibited to us by T. M. Adams and E. C. Means, administrators, with the will annexed, which we believe to be all the personal estate of said decedent, viz:

Two hundred and sixty (260) shares of stock in the Cincinnati, Portsmouth, Big Sandy & Pomeroy Packet Company, par value $100 per share, at 70c.....	18,200
Six hundred and thirty (630) shares of stock in the Ky. Iron, Coal & Mfg. Co., par value $50 per share, at $50.	31,500
Two hundred and fifty-six and $\frac{4}{5}$ ($256\frac{4}{5}$) shares in the Ashland National bank, par value $100 per share, at 1.25.....	32,100
One hundred and seventy-five shares stock in the Means & Russell Iron Co., par value $1,000, at $800.....	140,000
Forty-one (41) shares of stock in the Little Miami R. R. Co., par value $50, at $80.....	3,280
Two hundred and ten (210) shares in Means, Kyle & Co., par value $1,000, at $1,000.....	210,000
Nine hundred and seventeen (917) shares stock in the Roan Mountain Steel and Iron Co., par value $100 per share, at $20.00.....	18,340
Seventy (70) shares stock in the Portsmouth Gas Light Company, par value $50.....	3,500
Norton iron works, par value $1,000 per share, twelve (12) shares at 30c.....	3,600
	460,520

181	Ashland Coal and Iron Railway Co., par value $50 per share, at $35	24,920
	One hundred and fifty (150) shares stock in the Lowmoor Iron Coal, par value $100, at $125	18,750
	Two hundred and eighty-nine (289) shares in Second National bank, Ironton, O., par value $100, at $100..	28,200
	Two bonds of Mt. Auburn Cable Railway Company, Cincinnati, par value $1,000.....	2,000
	Twenty-five bonds, Eureka Company, Oxmoor, Alabama, par value $1,000	25,000
	One hundred bonds (reclamation, California), par value $500.....	No value.
	Twenty-six hundred and twenty-nine detached coupons (reclamation bonds, California) par value $20	No value.
	Note of Thomas A. Mack, Oct. 12, 1886, 1 year, at 7 %, for $15,000 (collateral, David Sinton's certified check on Citizens' National bank, Cincinnati, O., No. 663, July 22, 1890, for $22,012.39, payable to estate of Thos. W. Means), last payment February 14, 1889, $7,455.83, leaving balance of.....	10,000
	Note of Thomas A. Mack, April 29, 1887, 1 month, at 7 %, collateral same check, David Sinton, described above, equal in amount to the sum of principal and interest due on both notes, viz: $22,012.39, interest payment Feb. 16, '89, leaving balance, that date.....	10,000
	Note of S. S. Savage, May 11, 1889, 1 day (collateral, 10 shares Ashland Fire Brick Co.).....	700
	Note of R. Mather, March 9, '80, at 1 year, 8% interest, paid to Sept. 9, '81.....	No value.
	Note of Wm. Means, Nov. 22, 1888, 1 day, interest from Dec. 1, '88, *par* and int.....	45,000.00
	Note of Wm. Means, Aug. 20, '88, 1 day.....	5,041.67
	Note of Wm. Means, Nov. 9, '88, 1 day, amount $75,000, payment Feb. 28, '90, $75,000, leaving interest due, only int.	
	Note of Wm. Means, Nov. 3, '88.....	2,713.88
	Note of Wm. Means, Sept. 25, '88, 1 day.....	7,400.00
	Note of Wm. Means, Nov. 17, '88, 1 day.....	1,620.00
	Note of Wm. Means, Oct. 24, '88, 1 day.....	2,100.00
	Note of Wm. Means, Nov. 9, '88, 1 day.....	497.13
182	Note of Wm. Means, March 14, '88, 1 day, $15,027, less sundry payments, $9,900, endorsed on back of note, leaving balance due on note in addition to interest	5,127.00
	Due bill of Wm. Means, Feb. 15, '88, $125,911.74, less sundry payments, $84,884.28, endorsed on back of the bill, leaving balance due on due bill in addition to interest.....	41,027.46
	One account with Means, Kyle & Co.	65.90
	One account on Ashland Coal and Iron R'y Co., including interest to March 31, '90	1,701.15

Cash in Ashland National bank	47,926.20
Cash in Second National bank, Ironton, O.	2,456.50
Fifteen tons timothy hay at Hanging Rock, at $8.00	120.00
Account Means & Russell Iron Co.	8,715.55
Total amount	$752,302.44

Seven hundred and fifty-two thousand three hundred and two and $\frac{44}{100}$ dollars.

Given under our hands at Ashland, Ky., this 5th day of August, 1890.

W. HONSHELL.
W. C. RICHARDSON.
A. C. CAMPBELL.

We hereby sign and certify the foregoing as a true inventory of the estate of Thos. W. Means, deceased, which has come to our hands as his administrators with the will annexed.

E. C. MEANS.
T. M. ADAMS.

STATE OF KENTUCKY, }
County of Boyd, } *sct:*

I, J. H. Poage, clerk of the Boyd county court, Kentucky, do hereby certify that the foregoing inventory and appraisement of the estate of Thomas W. Means, deceased, was this day filed in my office for record, and the same with the foregoing and this certificate hath been duly recorded in my office.

Given under my hand this 7th day of August, 1890.

J. H. POAGE, *Clerk,*
By ROB'T H. POAGE, *D. C.*

A copy.
Attest:

G. F. FUIL, *C. B. C. C.,*
By W. O. HAMPTON, *D. C.*

183 Cross-examination of JOHN MEANS by Mr. MAXWELL:

X Q. 1474. Did William Means ever act as book-keeper for your father?

A. He did.

X Q. 1475. When?

A. I think I would have to look at the book there to see when he was acting as book-keeper and at times writing on the books when he was not the steady book-keeper—not continuous. I find charged here, May, 1858, page 122, Journal A, William is credited in his own handwriting for six months' services as clerk, ending the first of May, $500, and the same year, on August 14, for services as clerk, for three months ending August 1, 1858, $250. Same journal, page 128. The same journal, page 133, under date of October 29, 1858, credit for services for three months ending November 1, 1858, $250. Same journal, page 140, under date of December 29, 1858, credit for two months' services as clerk at $1,000 per annum, $166.67. These

are all in William's handwriting. Same journal, page 151, under date of March 29th, credit for three months' services ending March 31, 1859, $250. The same journal, under date of June 30, 1859, for three months' services at a thousand dollars per annum, $250. Page 158. The same journal, page 165, under date of October 1, 1859, credit for services, three months ending October 1st, $250.

X Q. 1476. You need not bother, Mr. Means, to refer to each entry, if you can conveniently refer to the last one. What I want to know is the period during which he was acting as book-keeper.

A. I would have to look through the journal to see. There were times when he would write on the books when he was not receiving compensation.

X Q. 1477. Take your own way of answering.

A. Page 178, same journal, under date of February 28, 1860, for three months' services to February 29, $250. Same journal, page 185, under date of April 24, 1860, for services ending this date, $150. That seems to be the last for which there was credit given here.

Mr. GLIDDEN: Is that all the credits that were given?

A. That is all that I see here. I probably would have to go clear through his account to see if there were any more. I find here, 1861, same journal, page 217, is an entry by William Means at that time. The only way I could tell further would be to go right through the books. I think you would find entries until, 184 and even after, William came to Cincinnati, when he would be at home.

X Q. 1478. When was it that he came to Cincinnati?

A. I cannot give the date that he moved here from the furnace. He was living here, I know, in 1869. Either here or at Yellow Springs. Just what date I do not recollect now.

X Q. 1479. After he came to Cincinnati and after he ceased to be your father's book-keeper, what, if any, knowledge did he have of his father's books?

A. Well, father's books were kept sometimes at the office of Means, Kyle & Co. and sometimes at his house and the books would be open to William's inspection, or any of us, and that is why I answered that probably all along through entries would be made by him as by other book-keepers.

X Q. 1480. Did you, while you were acting as book-keeper for your father, ever submit to William statements of your father's books or of any part of them, or trial balances of the rest?

A. Sometimes when he would be there I would have the books in my room at the office, and we would refer to matters that were matters of conversation of father's business. We might refer to father's books, and I recollect of showing him sometimes trial balances that were made at the end of each year after father moved to Ashland. I don't know that he saw every balance, but I know I showed him some of them. That would be just as it came up in conversation.

X Q. 1481. Did you have any conversation with William Means in respect to the entries by which each of the children were credited with $80,000, or with respect of the entries and payments by which

the accounts of all the children were subsequently made even a hundred thousand dollars?

Objected to as incompetent.

A. I have had conversations with him about these entries and explained why some of it was done, and some of the things that were charged to him, I delivered here.

Answer objected to.

X Q. 1482. What conversation, if any, did you have with William Means with respect to the payments or entries by which the accounts of all the children were made the same, $100,000?

(Same objection.)

185 A. I explained to him why it was done.

Objected to.

Mr. GLIDDEN: I want to know what was said.
Mr. MAXWELL: That is right. Tell us what was said.
A. Do you expect me to say what was said?
X Q 1483. Give us as nearly as you can the substance of what was said.

Objected to.

A. I explained to him why it was done. I knew the contents of my father's will and so did William. At the time of making that will I had more than twenty thousand dollars more than William had, and still further amounts more than my sisters, and I insisted on my father making the accounts equal, or nearly so, and kept at him until that finally was done at my suggestion.

Counsel for complainants object to the answer and ask that it be stricken out.

X Q. 1485. Go on, Mr. Means.
A. I explained to him my purpose and the reason I had urged it upon father, and I have told him what I had told father, that while I didn't suppose, didn't believe, that any of the family were jealous of it, that I wanted that there should be no cause for dissatisfaction in case there should be hereafter.

Objected to as irrelevant and incompetent, and counsel for com plainants ask that it be stricken out.

X Q. 1486. Is this what you told your brother William?
A. It is the substance of what I told him at times.
X Q. 1487. In view of the objection that is raised by counsel, for the other side, there might be some uncertainty in your answer, as to what it was you said to William Means. You testified that you explained to William Means why it was the accounts were made even. Now please tell us what it was that you said to William Means, substantially.

By Mr. GLIDDEN:

Q. 1488. Where was it?

A. I have talked with him here in Cincinnati, and at home in Ashland about it.

Q. 1489. When?

A. I cannot undertake to tell dates and give days. I was in Cincinnati probably half a dozen times a year, and some years
186 more, and to give dates and words of the conversations I have had with William here and there is simply impossible for me or any one else to do.

Cross-examined by Mr. MAXWELL.

By Mr. MAXWELL:

X Q. 1489. But there might be some doubt with respect to your former answer. State whether or not you mean to be understood that you told William everything as you stated it in that answer. I would like to have you state substantially what it was you said to William on that subject.

Objected to as leading and suggestive.

A. I don't think—I didn't undertake to say that was everything I had said to him. I was trying to give the substance of what had been done and the reasons for it. That, I think, I fully explained to him, I am very sure more than once.

X Q. 1490. What was the understanding between you and your father with respect to the moneys or properties that were charged in your account prior to the credit of eighty thousand dollars?

Objected to on the ground that understandings cannot be shown. He must prove what was said by the parties, as the law determines the understanding.

X Q. 1491. Of course you will confine yourself, Mr. Means, to what was said between you and your father, if anything, on that subject.

Objected to on the ground of the competency of the witness to testify, his father being dead.

A. My father would say often, in handing me things that are charged, that he was giving me this. I understood it as a gift and not as a debt to be paid back.

Same objection.

X Q. 1492. Was there any change in this regard with respect to moneys or property charged in your account up to 1884, or when the accounts of the children were evened?

Same objection.

A. Yes, sir; there was a difference in this respect. At first he used to say to us—say to me, and I suppose to the others—that he

intended to divide his estate equally between his children.
187 I believe that answers the question.

Objected to.

X Q. 1493. Well, state whether or not the account on your father's books up to the year 1884, when the accounts of all the children were closed, represented a debt from you to your father, or advancements by your father to you, and whether there were any other conversations on that subject than those which you have already testified to?

Objected to for two reasons: One, it assumes that at date the accounts of all the children were closed, which is not true; the other, that the objection heretofore made is repeated, and that the books themselves show. Also the form of the question objected to.

A. I did not consider it a debt to be paid back to him, and not as a debt as I would have dealt with other people who might have brought suit against me and collected. I mean a debt in that sense, and the conversations at the times at which he said this to me were numerous. And in answer to your question—or your question may misconceive—I said his purpose about dividing equally—your question referred to the date of 1884. When his will of 1880 was made then he changed his purpose. I want that to explain the answer that after that will he did not propose to make an equal division, but before that he had made a will—in fact two, which looked to an equal division.

By Mr. GLIDDEN:

X Q. 1494. Are copies of those wills in existence?

A. I suppose not. I suppose that when each will was made he destroyed the former one.

By Mr. MAXWELL:

X Q. 1495. What, if anything, did your father say to you after he had made the will of 1880, or at the time he made that will, with respect to the account against you on the books?

Objected to as witness is incompetent.

A. He gave a reason for my account being larger than the others.

Answer objected to.

X Q. 1496. State what it was that he said on that subject?

Objected to.

A. His reason was, as he stated, that I had always stayed
188 where I was working for something that he was interested in and looking after that and oftentimes at far less than he was paying other men for similar work, and for that reason he wanted to keep more to my credit than to any of the others—to give me more as a compensation for it.

By Mr. WHITAKER:

X Q. 1497. That was in 1880 when this conversation took place?

A. Before '80 and after '80. After the will was made, and before, too.

X Q. 1498. What portion, if any, of the payments that were afterwards made to William to bring his advancements up to yours were handed to William by or through you?

A. I could not tell that without examining the account.

X Q. 1499. Examine the account.

A. I am not right sure that I would be able even then to recollect it all. (Refers to books.) In September, 1880, William was paid $590.46 by check on the Bank of Ashland, and I think that was either handed by me to him direct, or enclosed to him in a letter—a check on the Bank of Ashland. I find that on Journal B, page 110, under date of fourth of September, 1880. The same Journal B, page 117, under date of 29th of April, 1881, certificate for sixty-three shares, being sixty-three hundred dollars, of the Cincinnati, Portsmouth, Big Sandy and Pomeroy Packet Company, on the 28th inst. That is the day before. That certificate I think I brought from Ashland here and handed to him. That is my recollection. Journal B, page 134, under date of June 27, 1882, I find certain charges of bonds which I brought here and I had here in the safe-deposit company and came here and delivered to William myself, if I am not mistaken.

Norton Iron Works bonds, ten $1,000 bonds, $10,000.

Lexington & Big Sandy R. R. bonds Eastern division. That was the title of the company when the bonds were issued. It is now the Ashland Coal and Iron Company, ten bonds, $1,000, ten thousand dollars.

The Lowmoor Iron Company of Virginia, ten bonds, each a thousand dollars, $10,000—making thirty thousand dollars of bonds at that time. Those I handed to William here in the city, down in the safe-deposit company in the old Lafayette bank.

By Mr. GLIDDEN:

Q. 1500. To save time—do you claim that those were things given to William to close his account in 1884?

A. That is what went to make up the amount in 1884.
189 That is a part of it. He asked for such things as I handed him to make up.

Q. 1501. Wasn't this $10,000 of Norton bonds the ten thousand given to William out of the distribution that was made to each of you of ten thousand dollars?

A. No.

By Mr. MAXWELL:

X Q. 1502. When you gave William this $30,000 of property, what did you say to him, and what did he say?

A. I told him that these bonds were from father as a gift to him. I told him what he had given the others.

X Q. 1503. Well, go on.

A. I don't find that there was ten Norton bonds given to any other one at that time.

Mr. GLIDDEN: That answers the question I asked you.

(Witness continues:) Same journal, page 148, under date of the 14th of May, 1884, William Means, note of the Ashland Coal and Iron Railway Company, dated the 11th of March, '84, one year, $4,000. William Means, check on the Bank of Ashland, same page, and same date, check for $700. I am not sure whether William was at Ashland on that date and got this or whether it was sent to him by letter, or I brought them here. I made the entries at the time and know that he got them.

X Q. 1504. Why was he paid on May 14, 1884, seven hundred dollars instead of five hundred dollars or a thousand dollars or some other sum? Why was the amount made seven hundred dollars?

A. These various amounts that I have been reading, added to the balance of his account previous to the time I began this, made the whole amount of his charge to him $99,300 and the $700 was made to make it an even $100,000. My father desired to make an even amount all around, and gave that check.

Mr. GLIDDEN: We object to last clause of answer and ask that it be stricken out.

X Q. 1505. State not what your father meant but what he said as to making the amount an even hundred thousand dollars.

A. My father wanted to make these accounts of the four living children an even amount. He said for me to draw the checks. I don't know that the checks can be found. He was not a good hand to take care of papers. If they could be found, it is probable that I wrote the checks and he signed them. I cannot answer
190 from recollection certainly. These entries were made, my father sitting by and looking, when I did these last entries of the 14th of May, 1884, journal, page 148.

X Q. 1506. State whether or not they were made by his direction.

Objected to.

A. They were made by his direction.

X Q. 1507. State whether or not anything was said to William on the subject of bringing the amount up to a hundred thousand dollars and equalizing the accounts of the four children.

A. I told William what it brought each account up to.

X Q. 1508. State whether or not after that time any credits or advancements were made by your father to you or to William or to any of his children.

A. I have no knowledge of any credits—no recollection now, and do not think he made any, unless it might be some trifling sum—nothing of an advancement.

X Q. 1509. State whether or not any of the moneys subsequently paid by you to or for William Means were by you on behalf of your father by way of gift or advancement.

Objected to.

X Q. —. You have stated that your father's sight was in such condition that he never saw the account subsequently opened with William Means and with yourself and with Margaret A. Means, entitled current accounts. Please state whether or not at the time of opening these accounts, or thereafter, your father had conversations with you with respect thereto, or whether your father otherwise had knowledge of those accounts.

Objected to: 1st, on the ground that the witness has not testified as therein stated; 2nd, to its competency.

X Q. 1512. I don't mean to say that you have testified to that, Mr. Means, but that is my recollection.

A. I did explain to him that I did propose to open these separate accounts and proposed to keep transactions separate on those accounts—separate from the other account, and he fully understood that.

X Q. 1513. Did you have any conversation with your father with respect to taking notes from William Means for the money which was paid to or for him after the failure of the Metropolitan bank?

Objected to as to competency and form.

191 A. I did have a conversation with him about it and told him I thought it would be better to close it by note, that the note would show different from what it would if it was a simple account, that I was not sure from the construction of his will what an account charged might be, and I thought it was a matter of better assurance to take the note.

X Q. 1514. What, if anything, did your father say?

Objected to.

A. He assented to it, and after hearing my reasons, said to do as I thought best. If I thought that was the best way, why he was satisfied to do it in that way.

X Q. 1515. Did William Means have a copy of his father's last will and testament?

Objected to.

A. He had.

X Q. 1516. When did he get it?

A. I cannot give the date, but I suppose it wa t so long after the execution of it. I made a copy of it. He as for a copy of it and I told father he wanted it, and made the co for him.

X Q. 1517. Did you, or any of your father's children, so far as you know, ever execute any notes except upon the one occasion when you say you borrowed money from him and gave a note therefor?

A. I don't recollect of ever giving but one note. I don't think he ever took notes of any of the others before.

X Q. 1518. On the occasion on which you gave the note, what was it for?

A. It was for money loaned.

Objected to as being a conclusion.

X Q. 1519. Was interest charged on the note?

A. Interest was charged on the note.

X Q. 1520. State whether you paid the principal back also.

A. I paid the principal with interest.

X Q. 1521. How long before your father's death was it that you had any business transaction with him other than to collect moneys for him—I mean business transaction between you and him for the purchase or sale of anything?

A. I cannot recollect when the last transaction of the kind might be.

192 X Q. 1522. About how long? I am not particular as to the exact date of it—whether in the last ten years, or fifteen years. You can refer to your account, if you like.

A. (Looks at ledger.) I think everything in that grows out of transactions with William. (243 of ledger.) I would, as I stated before, make collections for him, or buy something and enter by check or deposit or payment and directly on his books. I suppose by a strict construction it would seem I was dealing with him. Suppose I was in the city of Cincinnati and bought something. I might give a check of my own and carry it home and take his check for it at once and it made no account between me and him and I would not consider that it was a transaction between us, and still without an explanation it would seem to be, and yesterday I was thinking that some of those Eureka bonds—I cannot recollect how they did come. I will look at that account. I think probably I paid for some of them and afterwards turned them — to him.

He held, as I testified yesterday, twenty-five Eureka bonds of a thousand dollars each, and on the 17th of May, 1887, page 170, Journal B, I find this entry:

Sundries to Ashland National bank.....		$5,043.15
For 5 bonds Eureka Co. Ala. of $1,000 each..	$5,000.00	
Interest on same from Apr. 1st to 16th inst...	43.15	

X Q. 1526. Were there any unsettled transactions between you and your father at the time of his death?

A. There were none.

X Q. 1533. You need not copy the accounts. Can you, by looking at the accounts, tell us when the last business transaction between you took place?

A. The first of August, 1881, he sent me fifty thousand dollars to invest for him. He knew at the time of the investment it was proposed to make. On the 8th of September I got a note from the Ashland Coal and Iron Railway Company secured by collateral bond. December 25, I got thirty bonds of the Low Moor Iron Company, $30,000. There was $146.37 of accrued interest which I paid for him and had credit. The entry shows here that this transaction really took place on the 12th of December. I am reading now from another man's work. It is entered the 25th of December, but refers to letter from me of 12th of December, but December 25, 1881, I am charged with $600 for cash for trip to Atlanta.

193 X Q. 1546. When did you first learn of any claim to William's share of your father's estate or any part thereof being set up or made by his wife or his children or any of them, or any trustees for them?

A. The first knowledge I had of it was probably in November or December—late in November or early in December of '91.

X Q. 1547. After this suit was commenced?

A. Of course it was after, because Mr. Hager and Col. Moore came to see me about this a week or ten days after I got home, after having been to Europe, and I presume it must have been in December, judging from the time. That is my recollection of it first. If Cook had mentioned it between those times I do not recollect. I don't think it was mentioned to me until then.

X Q. 1548. Have any of the heirs or legatees of your father or children, ever made any complaint, so far as you know, about your transactions with your father of the business that you did for your father, or manner in which you did it?

Objected to.

A. I don't know of any objection. I haven't heard of any from any of them at all until since growing out of this suit.

Objected to.

X Q. 1550. In the amounts with which they are respectively charged making up the $100,000 in addition to the $80,000, has there ever come to your knowledge any complaint of any of his children as to those matters?

A. I have never heard of any complaint about them.

X Q. 1552. Now, then, with reference to the charges on the books of, I believe, about twenty-seven thousand dollars against Mrs. Culbertson made after her death, how did it happen that that charge was after her death and not before?

A. During her lifetime father paid for a piece of ground in Ashland and had the deed made to her and paid for building a house thereon. The payments and looking after the work was done by Mr. Culbertson and it was nearly all paid by the firm of Means & Company and charged on their books, in which my father was a partner and Culbertson was a partner, and if any account was rendered to him from them it was not put on his books. Means & Company was succeeded by the firm Culbertson, Means & Culbertson, being Captain Culbertson, my brother-in-law, my father

194 and a brother of Captain Culbertson, and the account was carried on and after the furnace was stopped then these entries were made on my father's books to make the balance on his books against the firm equal and the same as the balance which they showed to his credit on the furnace book, that is, the firm books which were kept at the furnace. The Means & Company account was carried on and just the title changed. The books of the firm are the books in which my father was interested and it was put from one set of books in which he was interested into the set of books in which he alone was interested. He was at Ashland

at the time I made the entry. The books were at Ashland at that time and it was before he moved there. I never saw any account of it and it was made from memoranda. It is pretty difficult to go back for fifteen years.

X Q. 1553. That is why it was made afterwards, because it was taken from these books and put on his books?

A. It was taken from these books of the firm to his individual books. Those firm books cannot be produced because the office was burnt and the books which were kept at the time that the firm name of Means & Company. I don't know the date of that fire but it was somewhere in '78 or '79, prior to the making of the entry; I think probably in 1878.

X Q. 1554. You have been asked about the time that this man—I believe Fearing, Jr., was his name—was hired and attended your father?

A. Louis Fearing, Jr., was the last man he had.

By Mr. WHITAKER:

X Q. 1556. Did Stabb stay with him until he hired Fearing?

A. He discharged Stabb. He was dissatisfied with him and asked me if I could recommend him a man and I sent word to Fearing to go and see him and Fearing went to see him and he hired him.

X Q. 1558. Who furnished the memoranda from which the credit and the debit was made?

A. It was all made from the memoranda furnished and made by Thomas M. Adams. After he had furnished them I waited until father was there with me and I could consult with him, and then made the entry with the notes as given.

195 Part of page 86, Journal B.

ASHLAND, KY., *30th June*, 1879.

1st July.
2nd.

332	Sundries. To Culbertson, Means & Culbertson	.....	$28,347.12
331	Expenses. For 140¾ lbs. honey, 1870, Aug. 30th...	22.11	
340	Interest. For on % to 1871, March 1st	641.80	
280	Mrs. Jane Culbertson, for various items in % of Means & Co., paid on her house in Ashland for construction, and for improvement of the grounds.	27,683.21	
	N. B.—These are found in memo. by Thomas M. Adams, copied from books of Means & Co. and entered by order of Thomas W. Means, this day. John Means.		

Page 87.

ASHLAND, KY., *2nd July*, 1879.

332	Culbertson, Means & Culbertson to sundries.....	$43,941.00	
274	Means & Co., for balance % under this name.....	.....	9,244.29
341	Interest. For on % to 1 March, 1870.....	3,657.48	
	For on % to 1 March, 1871	4,530.04	
	" " " " 1 " 1875	162.16	
	The above is obtained from memo. of % copied by Thomas M. Adams from the books of the company.		
	For on % to March 1, '76, per % rendered marked (E)	549.73	
	For on % from 1 March, 1876, to July, 1878, % marked (F)	4,175.08	
		———	13,074.49

196

280	Jane Culbertson for J. T. Calvin orders, 12th April, 1870; see entry on these books 9th April, 1870, and T. M. Adams' memo.	4,725.00	
	For check on Bank of Ashland, see 9th April, 1870, page 359, see 30th July, 1870, page 363 and see 10th December, 1869, page 353 of my journal and memo. by Thomas M. Adams	8,000.00	
	For check on Bank of Ashland see 6th June, 1870, page 364 and memo. by T. M. Adams	5,000.00	
	For charges as paid on house 18th March, 1873, page 401 and memo. by T. M. Adams	2,219.85	
	For frt. paid M. O'Brien 9th Sept., 1870, see memo. T. M. A.	1.25	
			19,946.10
311	Thomas W. Means for amount to balance and make agree with % of Culbertson, Means & Culbertson		1,676.12
		$43,941.00	$43,941.00

Memo. at bottom of page 87, Journal B:
N. B.—The entries of this day are made as stated at the direction of my father, Thos. W. Means, and from information derived from memo. copied from the books of the company by Thomas M. Adams which books have since been destroyed by fire. 1879, July 2nd. John Means.

197 X Q. 1560. Now, Mr. Means, state whether a charge to profit and loss in these books indicates in every case a loss to the estate, or whether the credit indicates a gain. If not, state what it means.

A. No, it does not; and a credit does not indicate always a gain. The meaning would have to be found by examining the entry, generally. It would not always tell otherwise.

X Q. 1561. Please illustrate.

A. If a stock is bought for which a premium was paid, there is a debit to profit and loss for the premium. That is the way I would make the entry. If he buys a stock, say one hundred dollars, which is worth ten per cent. premium, the entry would be sundries to the bank from which he checked to pay for it, giving the name of the stock and the par value of one hundred dollars—and profit and loss for the ten dollars premium, if it was a premium, for ten per cent. profit and loss would be charged. If it is below par, and he buys one hundred dollars of par value and buys it at ten cents on a dollar, the entry I would make would be—naming the stock to sundries and the bank ten dollars and profit and loss ninety dollars. Those are credit entries for the bank and profit and loss; showing a credit to profit and loss of ninety dollars when the stock was worth no more than ten.

X Q. 1562. State how the stock account was conducted. Was it carried on varying as the properties went up in value or decreased in value, or did they remain at whatever the investment was without regard to the value of the assets or property purchased as long as it was kept on the books?

A. Stocks and bonds and like securities would stand on the books without any change—stand as charged at the par value without re-

gard to the real value unless deemed utterly lost; then they might be charged off entirely to profit and loss. Real estate might sometimes be changed, reducing or increasing to some estimated value. This was not often done—generally left at the cost price.

X Q. 1563. Do you remember anything about the charges with reference to what is called the Hamilton farm?

Objected to as the books show what the charges are.

A. He purchased and paid for what he called the Hamilton farm, where he lived at Hanging Rock for a number of years, but
198 never became the legal owner. The title was made to my mother and was so at her death, continued in her. The title of the account, I think, is Hamilton farm. The charge was made against it for the cost so that it stood on his books as an asset and as though belonging to him and in reckoning his estate on the balance sheet or trial balance it stood as though belonging to my father, though in fact the title had always been in my mother, and was so at his death. There had been no division, no partition at the time of his death among the heirs.

X Q. 1564. State whether or not the bulk, or a large portion, of his estate was investment in mining and manufacturing establishment- and stocks in those companies.

A. A large portion was.

X Q. 1565. Now, state what was the effect of the operating of those establishments upon the value of the property.

A. In the working of mining property and mines the effect is to reduce the value.

X Q. 1566. State what, if anything, you said to your father with reference to taking a note from William Means for the amounts that he obtained after the failure of the bank in preference to a receipt.

The form and competency of the question are objected to.

A. I gave as a reason to him that a receipt or charge on his books, simply, would not have the same effect in law that a note showing indebtedness to him would; that my understanding of his will as he had made it, as he understood it, that it was better to take note than have an account or receipt—to take a note showing evidence of indebtedness and the collaterals received or redeemed from the bank on sale to be applied as credit on the note, keeping it as an indebtedness in the shape to indicate and show an indebtedness.

X Q. 1567. State what answer, if any, he made.

Same objection.

A. He told me to do as I thought was the best way to do—to do as I thought best.

X Q. 1568. Mr. Means, please state how the money was raised that you paid and for which the two hundred and eighty thousand dollars in notes was given; that is, the bulk of it as nearly as you can.

199 A. Some of it was borrowed, some by the sale of stocks and bonds and collections of notes drawn by my father.

X Q. 1569. About what proportion of it was borrowed?

A. The greater part about $125,000 was borrowed. The $75,000 was borrowed and there may have been some other amount, but not a great part of it. It was borrowed in the name of my father, Thomas W. Means.

X Q. 1570. Has it all been paid?

A. It has all been paid.

X Q. 1571. State the source of the funds which paid it? Whose funds paid it?

A. Thomas W. Means' funds paid it from the sales of stocks and bonds and collections of debts and notes due him.

X Q. 1572. How late before the failure of the Metropolitan bank was William Means in Ashland?

A. About near the middle of December, 1887.

X Q. 1573. The bank failed in '88?

A. Failed in February, of '88.

X Q. 1574. Did he see his father then?

Objected to.

A. Yes, sir; he saw him and staid at his house.

Answer objected to.

X Q. 1575. What was the date of the power of attorney that your father executed to you of which I believe a copy has been offered in evidence?

A. The date of 31st of December, 1877.

X Q. 1578. In the answer to question 965 you state "Sometimes paid in money and sometimes I took securities at an appraisement and agreement of the parties." I will ask you if you mean the securities were distributed to you in kind or that you purchased them at the appraisement?

A. In that word I "took" them, I purchased them from the administrators at the appraisement.

X Q. 1579. In answer to question 966 you say "I don't believe I can answer that question at any rate. I took some Mt. Auburn Cable Railway stock and $2,000 in bonds. I recollect that." Is it correct that you took the bonds and the stock, or that you took the bonds or stock only?

A. I bought bonds only.

X Q. 1580. Of whom?

200 A. Of the administrators—didn't get any stock. For the bonds I gave them my check for the principal and the accrued interest.

X Q. 1587. My recollection is, Mr. Means, that in chief you stated in substance that you charged yourself on your father's books with $125,000 or other sums that you paid for William Means, for the purpose of showing the transaction. I will ask you to explain that transaction more fully?

A. I paid the $125,000 and odd dollars with money of my father; went to Ashland the same evening, and taking boat to come back again the next day after I got home. I was greatly hurried

and it was a question in my mind whether to enter the notes among father's bills receivable—the notes taken up from the Metropolitan bank, or to take a new note from William Means. In order that father's books should show where the money had gone for which father's securities had been some of them sold and his notes given, I made the entry on the books as I had done the old business—made the charge against myself so it would appear on his books until there was a settlement made by note or an entry making the note which had been given to the bank, making the notes his, which would appear as among his bills receivable.

X Q. 1588. In chief, you said something about some stock in a Portsmouth bank, about $5,000 which you bought and afterwards, and, I believe, after the bank had failed or was about to fail, transferred to your father. I will ask you how you came to buy that stock?

A. I bought it at my father's instance; bought of his youngest brother, then his only brother, at that time, at a price determined by himself and his brother.

X Q. 1589. How did you happen to transfer it to your father at the time you did?

A. He having had me buy the stock from his brother, believing that there might be some loss in it, as I had acted at his instance and advice, he proposed to take the stock at what I had paid for it, and he did so.

X Q. 1590. You spoke about some Kentucky Iron and Coal Company stock, and I believe you stated that you subscribed also for stock at his instance; if so, who did so and what was done with reference to that stock also?

A. Hugh Means subscribed for a pretty large amount which was distributed, transferred by him to other persons that it was supposed would be an advantage to have as stockholders and it
201 was known some of them would take the stock but were not present to subscribe. I cannot tell how much, but I think some of it was transferred to my father. His books will show. I would have to examine them.

X Q. 1591. If any was transferred to your father, was it also done after it was apparent that the investment was not a good one, and if so for what reason was it transferred to him?

A. I would have to see whether it was transferred to him, first. I don't find from my father's books any transfer from Hugh Means to him.

X Q. 1592. You have been asked something about the trial balances taken from the books of your father, I believe. How often were trial balances made?

A. After he moved to Ashland I took them off at least once a year, sometimes oftener. Before that they were taken irregularly, at no regular time.

X Q. 1593. Well, were they submitted to your father from time to time as they were taken off?

A. All that I took off were submitted to him—were generally taken off while he was present.

X Q. 1594. Did the books balance, or did they at the time of your taking these off?

A. They did at the time I took them off.

X Q. 1595. Were these trial balances submitted to William Means, or any of them?

A. They sometimes were shown to him when he was visiting at my office at Ashland.

X Q. 1596. Mr. Means, the $400,000 that is charged against the four children living, in the aggregate, does that still appear upon the books as an asset, or has it been charged to profit and loss?

A. I never made any charge to it. It stood as though it were an asset and would have been taken off in the balance on the debit side with any other asset and on the same side that stocks and bonds would stand.

X Q. 1597. Have you seen the inventory that the administrators made of the assets of the estate, or that Adams as committee made, or both?

A. I never have seen the inventory itself. I have seen what I understood were copies.

X Q. 1598. So far as your knowledge and information goes, how is that as to being correct?

A. So far as I know it was correct—a correct list as to the values. Different persons might place different values on different things.

X Q. 1599. What is the means by which one could arrive at the amount or value of your father's estate?

202 A. From the books; to take a trial balance which would show everything that he had belonging to him, good or bad, and his debts. Then estimate the value as best you might, of each kind of property, whether in stocks or bonds or real estate or notes, and deduct from that his liabilities, if any. That would be the only way that I would know of.

X Q. 1600. And would you deduct also this $400,000 and other items of similar character?

A. I would not have considered, I did not consider, that that was a debt due. I never considered that I owed him a debt or that the others did.

X Q. 1601. How soon after you paid the $125,000, to the Metropolitan National bank for William Means, did you meet William Means, and where and under what circumstances, if at all?

A. A very short time after. It was late in the evening when I finished the transaction, rode up Third street in the horse car to Broadway. William Means was in the car, rode up to Broadway and walked down to the steamboat in which I went up the river.

X Q. 1602. Did he walk down with you?

A. We walked down to the boat together, and he sat on the boat until she left.

X Q. 1603. Did you make known to him at that time that you had paid the $125,000?

A. I did. Gave him the exact figures that I had paid and showed him the bundles of papers in which I had the securities given to me.

X Q. 1604. What did he do as to indicate pleasure or displeasure?

A. He seemed to be very much pleased to know that it was done.

X Q. 1605. What, if anything, did you tell James McConville at the time you paid the $125,000 as to who was making the payment?

A. I told him it was paid with my father's money.

X Q. 1606. What did you tell him or desire him to understand at the time you left the $75,000 with him?

Objected to.

A. I wanted him to believe that it was paid with my own money

X Q. 1607. Why the difference?

A. The reason that I proposed not to take William's note to father for that the same as I had done in the other case, which made it then William's money. If the bank committee had known it was William's money, they would have attached it at once and no chance to get it returned.

203 X Q. 1608. A portion of a letter has been offered in evidence from William Means to some of his family—I have forgotten which one—in which I believe you expressed a hope that you might save something from the wreck of his fortune for his family. How did you happen to have that hope under the circumstances?

Objected to.

A. At first my information of the values of many of the securities turned over was derived from William Means. I knew nothing of the concerns, some of them I had never heard of before and I think in nearly every instance his estimates were higher than I could find anybody would buy the securities for excepting a few that I knew of near at home here. Those were paid for at about the value put on them, as I believe, and that induced me to believe that the estimates might be something near the value of any and all. So that I got from him a higher estimate of the values than I afterwards realized. Then, too, some of the stocks in my father's estate won't realize near what we supposed they were worth a few years ago.

X Q. 1609. A portion of a letter to some member of William Means' family, written by him, has been referred to, in which he speaks something about Mrs. Adams not being able to get funds from you, and I would ask you what the fact is as to who at that time was looking after Mrs. Adams' business. Were you doing so?

A. I was not. In 1888 and 1889 her son and herself looked after her business and I don't think from the time she left home in 1888 until she returned in 1889 that I was requested to remit one dollar to her or that I did remit a dollar to her.

X Q. 1610. Did you have possession or control of her funds in any way so that they had to ask you for funds, or either of them, at that time?

A. I think that probably I owed her a small amount then—not a great deal. But I was not controlling her business affairs. They would not need to ask me for money unless they wanted what I was owing them. They would not have need for any other. I don't recollect of their asking me for what I owed them, and if they did I paid it. I don't think they did ask me.

Adjourned to 2 o'clock.

FRIDAY, *February 24th*, 1893—2 p. m.

X Q. 1611. You stated this morning you borrowed a large portion of the money you loaned to William Means. You did not
204 state from whom you borrowed, and whether they took notes of Thomas W. Means signed by you as agent.

A. I borrowed from Mr. David Sinton, Henry Hanna, John Russell, and Margaret A. Means. I gave each of them notes of Thomas Means drawn by me as his attorney-in-fact. I gave note—yes, I gave more than one note to some of them. I gave two notes to Mr. Sinton, two to Mr. Hanna, and one to Mr. Russell. I think two to Margaret A. Means, and one of them to Mrs. Adams.

X Q. 1612. Who is the John Russell you refer to? What relation, if any, did he stand in to Thomas W. Means?

A. John Russell was a partner in Bellefont furnace, the firm of Means, Russell and Means, and probably twenty-five to twenty-eight years—then was director and president in the Means & Russell Iron Company which succeeded to the partnership business.

X Q. 1613. Did he then live in Ashland and was he a neighbor of your father's, and had he seen him frequently?

A. He lived in Ashland on the same street with my father and saw him most of the days of every week.

That portion of the answer is objected to which states that he saw him frequently.

X Q. 1614. Something was said on your examination-in-chief, as to your receiving salaries in the firms or companies in which your father was interested. What was the character of the salaries as to amount? I do not want an accurate statement of each one, but just the general character.

A. The salaries were about the same as paid to other men for like work usually, but oftentimes my salary was less than was paid to other men for the same kind of work.

X Q. 1615. Well, how much did they aggregate per year in all the affairs in which you were interested with your father; as a rule, about how much, going back say a period of ten or fifteen or twenty years?

A. It varied greatly with the business. For a number of years I only got four hundred dollars a year. I think the highest salary that I ever got from any company in which he was interested was $2,100 a year.

X Q. 1616. How long did you get that, and when?

A. It was, I think, a year or two before 1869—how many, I could

not tell; I think it was not more than three years and prob-
205 ably not so long. Part of the time the Kentucky Iron and Coal Company paid me $600 a year; from 1885 to 1890 the Bank of Ashland paid me $1,000 a year. While the Bank of Ashland paid me that salary, I was getting then a salary of $600 from the Kentucky Iron and Coal Company, and that made $1,600.

X Q. 1617. When you received the $2,100, was that the sum that had been paid to the person that preceded you in the same service, or more, or less?

Objected to.

A. I think I succeeded myself, as it was a raise in salary—that before that I had been paid $800 a year and that Captain Culbertson paid me the same that he did his brother at the furnace. That is what I think was the raise.

Objected to.

X Q. 1618. In the investments that you and your father were both interested in, did your father invest at your instance, or did you invest at his instance?

A. He generally took the lead and I invested at his instance. I think that was the case in every instance in companies in which we were interested together.

X Q. 1619. You have been asked about some charges against your sister Mrs. Culbertson. I would ask you if you can state whether any interest in the Buena Vista furnace, I believe it was, was charged against her; if so, state what interest.

A. I think it is before the credit of $80,000 to each one, that she was charged with one-quarter interest given her husband and I think that charge was $10,000. I would have to look at the amount and the date.

X Q. 1620. I was simply asking for the interest that was charged.

A. That was for one-fourth, and the credit of $80,000, I think was made in the spring of 1884, so it was prior to that, but no charge was ever made after for the loss in the business.

X Q. 1621. This morning I asked you about the charging yourself on the books of Thomas W. Means with $125,000. I see by the books—and that account is in evidence—that the note is dated the 15th of February and the charge was made against yourself on the 15th of February. What was the date at which the note was given to you or forwarded to you, for that $125,000, or about the date?

A. The payment was made on the 15th of February, I think it was on Wednesday, and that I got home on the 16th and
206 made the entry on the book. A credit on the note was credited on the day I received it—I think the 22nd.

By Mr. WHITAKER:

X Q. 1622. Did you, after you got home, write the note and send it to William and he sign it and send it back; do you recollect?

A. No. I think I wrote a pencil note—a form—and sent it to

him and that he wrote the note wholly himself. I think you have shown that form here.

By Mr. ANDERSON:

X Q. 1623. Look at that paper handed you and state what it purports to be.

A. It purports to be a copy of a note for $2,713.88, executed by William Means to the order of Thomas W. Means at New Haven, Connecticut, December 3, 1888, and with endorsements.

Objected to.

X Q. 1624. I will ask you whether or not that is a copy of an original note that was delivered to Thomas W. Means.

A. I did not make this copy, but I believe it is a substantial copy of the note.

Question and answer objected to.

X Q. 1625. Look at the endorsements and state if they are correct.

Objected to.

A. That is the calculation. I never made it, and it is dated November 6, 1890.

X Q. 1626. Look at these papers shown you and state what they are and what they purport to be, and whether or not they are correct copies of notes executed by William Means to Thomas W. Means and delivered to you as agent of Thomas W. Means, making appropriate designations of the notes and the endorsements thereon respectively, in your answer.

This line of examination is objected to.

A. Here is a note dated New York, August 20, 1888, executed by William Means to the order of Thomas W. Means for $5,041.67 that I believe is a substantial copy of one of the notes that I received for my father. The endorsement is made October 6, 1890—not by me or while I had control of it.

Here is a note dated Cincinnati, November 16, 1887, for $6,000 payable to the Ashland National bank with interest, executed
207 by William Means. I think I made all the endorsements on this note. The note reads: "I promise to pay to the order of myself" and he, William Means, endorsed payable to William C. Richardson, "Cr.," the initial for "cashier." Endorsed by William Means, then endorsed by the cashier as paid by Thomas W. Means.

Here is another note, dated December 10, 1887, payable to the order of W. C. Richardson, Esq., cashier, $9,000, with interest, executed by William Means. I think I made all the endorsements on this. These two notes, I believe, are substantial copies of the notes taken up from the Ashland National bank. I refer to the endorsement of payment in different amounts—the first endorsement, and not the assignment of the note.

Here is a note dated March 19, 1888, Yellow Springs, Ohio, pay-

able to the order of Thomas W. Means, executed by William Means, for $15,027. I believe this is a substantial copy of the note signed by William Means after the two notes were paid to the bank. I pinned that note with the two which had been taken up from the bank. They were entered upon Thomas Means' books as bills receivable, and I never made any change, entering this $15,027 note on his books. But it showed the amount that was paid, with the interest that accrued after the notes were due until they were paid. One of them was due several days before the other one. There was some accrued interest.

Here is a note dated Cincinnati, Ohio, February 15, 1888, due Thomas W. Means or order $125,911.74, executed by William Means. Several endorsements of payments on the note made by myself—two—one 1890, April 17, one 1890, October 6, which was not made by me. I think this is a substantial copy of the note and all the endorsements made by myself. I did not make the copies and I am testifying to the best of my recollection.

Here is a note of October 24, 1888, for $2,100, executed by William Means to the order of Thomas W. Means. I believe that is a substantial copy of one of the notes given, and the endorsements on the note was dated after it passed out of my hands.

Here is a note dated New Haven, Connecticut, November 9, 1888, at one day, executed by William Means to the order of Thomas W. Means, for $75,000. Attached to this is an agreement as to its treatment in the distribution of the estate. The first endorsement, I think, was made by myself on this note. I think that is a
208 substantial copy of the note and the agreement attached to it.

Here is a note dated New Haven, Connecticut, November 22, 1888, for $45,000, executed by William Means in favor of Thomas W. Means, also with an agreement as to the treatment of it in the distribution of the estate. I think that is a substantial copy of one of the notes and agreement belonging to my father. The endorsement was made after it passed out of my hands.

Here is a note dated New Haven, Connecticut, November 9, 1888, executed by William Means to the order of Thomas W. Means, for $497.13. I believe that is a substantial copy of one of the notes executed. The endorsement was made after it passed out of my hands.

Note dated New York, September 25, 1888, executed by William Means to the order of Thomas W. Means, for $700. I believe that is a copy of one of the notes which I took for Thomas W. Means. Endorsement made on it after it passed out of my hands.

Another note, dated New Haven, Connecticut, November 17, 1888, executed by William Means to the order of Thomas W. Means, for $1,620. I believe that is a substantial copy of one of the notes given by William. Endorsement made after it passed out of my hands. This has attached the agreement as to the treatment in the distribution of the estate.

X Q. 1627. What bank was W. C. Richardson cashier of, if any?
A. Ashland National bank.

X Q. 1628. These two notes, then, that were given to the Ashland National bank, or W. C. Richardson, cashier thereof, $6,000 and $9,000 respectively, were taken up by Thomas W. Means, at the instance of William Means, at maturity, I believe you have stated in your evidence; how is that?

A. They were taken up soon after their maturity by Thomas W. Means at the request of William Means.

X Q. 1629. And the copies here are substantial, if not accurate, copies of them?

A. Yes; that is what I have testified to.

X Q. 1630. As to the other notes you have testified to, is each of them a substantial, if not accurate, copy of the ones that they purport to be copies of?

A. I think they are.

X. Q. 1631. Are those the notes that you turned over to Thomas Adams—the originals of them—to Thomas Adams, committee?

209 A. I think these are copies of notes the originals of which I turned over to Thomas Adams as committee.

Copies of the notes above mentioned offered in evidence as Exhibit 23.

They are as follows:

(Copy.)

EXHIBIT 23.

Cincinnati, February 24th, 1893. B. Perin, Sp. Ex.

NEW YORK, *August 20th*, 1888.

One day after date I promise to pay to the order of Thomas W. Means, five thousand forty-one and $\frac{67}{100}$ dollars, for value received.

$5,041.67. WILLIAM MEANS.

Endorsed: Payment on this note Oct. 6, 1890, fifty-six hundred and eighty-five and $\frac{32}{100}$ ($5,685.32) dollars.

(Copy.)

$2,713.88. NEW HAVEN, CONN., *Dec. 3d*, 1888.

One day after date I promise to pay to the order of Thomas W. Means, twenty-seven hundred thirteen and $\frac{88}{100}$ dollars for value received, with interest from date.

WILLIAM MEANS.

Endorsed: Payment on this note Oct. 6, 1890, three thousand and thirteen and $\frac{76}{100}$ ($3,013.76) dollars.

(Copy.)

YELLOW SPRINGS, O., *March 19th*, 1888.

One day after date I promise to pay to the order of Thomas W. Means, fifteen thousand and twenty-seven dollars for value received.

$15,027.00. WILLIAM MEANS.

210 Endorsed: Payment on this note Oct. 6th, 1890, six thousand five hundred and eighty-three and $\frac{64}{100}$ ($6,583.64) dollars.

(Copy.)

$6,000.00. CINCINNATI, *Nov. 16th*, 1887.

Three months from November 18th, after date, I promise to pay to the order of myself, six thousand dollars, at the Ashland National bank, Ky., with 6 per cent. interest after maturity, value received.

WILLIAM MEANS.

Endorsed: Pay W. C. Richardson, cr., or order William Means. Paid by Thos. W. Means, W. C. Richardson, cas. Payments on this note: 1888, Dec. 20th, payment twenty-six hundred and forty ($2,640) dollars. 1889, March 29th, four hundred and forty ($440.00) dollars. 1889, April 29th, four hundred and forty ($440.00) dollars. Dec. 26th, four hundred and forty ($440.00) dollars.

(Copy.)

$9,000.00. CINCINNATI, *December 10th*, 1887.

Three months after the 13th inst., after date, I promise to pay to the order of W. C. Richardson, Esq., cr., nine thousand and $\frac{00}{100}$ dollars, at the Ashland National bank, Ky., with 6 per cent. interest after maturity.

Value received (secured by collaterals).

WILLIAM MEANS.

Endorsed: Paid by Thos. W. Means, W. C. Richardson, cash. 1888, Dec. 20th, payment thirty-nine hundred and sixty (3,960) dollars. 1889, March 29th, six hundred and sixty ($660) dollars. 1889, April 29th, six hundred and sixty ($660) dollars. 1889, Dec. 26th, six hundred and sixty ($660) dollars.

(Copy.)

CINCINNATI, O., *Feb. 15th*, 1888.

Due Thomas W. Means or order one hundred and twenty-five thousand nine hundred eleven and $\frac{74}{100}$ dollars, with interest from date.

$125,911.74. WILLIAM MEANS.

211 Endorsed: Payments on this note: 1888, Feb'y 17th, twelve thousand five hundred ($12,500.00) dollars. 1888, Feb'y 20th, sixteen thousand three hundred ($16,300.00) dollars. 1888, March 6th, two thousand ($2,000.00) dollars. 1888, Nov. 23d, eight hundred and eighty-one and $\frac{67}{100}$ dollars. 1888, December 20th, sixty-six hundred and ninety ($6,690) dollars. 1889, Jan. 21st, twenty-seven thousand five hundred and ten ($27,510) dollars. 1889, Feb. 26th, twenty-six hundred and twenty-five ($2,625.00) dollars. 1889, March 8th, ten thousand two hundred and seventy-five ($10,275.00) dollars. 1889, March 29th, eleven hundred and fifteen ($1,115.00)

dollars. 1889, April 29th, eleven hundred and fifteen ($1,115.00) dollars. 1889, July 18th, twenty-three hundred and fourteen and $\frac{61}{100}$ ($2,314.61) dollars. 1889, Dec. 26th, eleven hundred and fifteen ($1,115.00) dollars. 1890, April 17th, four hundred and forty-three ($443.00) dollars. 1890, Oct. 6th, fifty-one thousand six hundred and seventy-seven and $\frac{90}{100}$ ($51,677.90) dollars.

(Copy.)

NEW YORK, *Oct. 24th*, 1888.

One day after date I promise to pay to the order of Thomas W. Means twenty-one hundred dollars, for value received.

$2,100.00. WILLIAM MEANS.

Endorsed: Payment on this note Oct. 6th, 1890, twenty-three hundred and forty-five and $\frac{70}{100}$ ($2,345.70) dollars.

(Copy.)

NEW HAVEN, CONN., *Nov. 9th*, 1888.

One day after date I promise to pay to the order of Thomas W. Means seventy-five thousand dollars, value received, with interest from date.

$75,000.00. WILLIAM MEANS.

Endorsed: 1890, Feb. 28th, by payment, seventy-five thousand ($75,000) dollars. Payment on this note Oct. 6th, 1890, six thousand and seventy-five and $\frac{50}{100}$ ($6,075.50) dollars.

212 (Copy.)

It is agreed as part of the transaction by which I have procured a loan of seventy-five thousand dollars upon the foregoing note, that the amount thereof and all interest shall be paid from my interest as devisee or distributee of the estate of Thomas W. Means.

Nov. 9th, 1888.

WILLIAM MEANS.

(Copy.)

$45,000.00. NEW HAVEN, CONN., *Nov. 22d*, 1888.

One day after date I promise to pay to the order of Thomas W. Means forty-five thousand dollars for value received, with interest from December 1st, 1888.

WILLIAM MEANS.

Endorsed: Payment on this note Oct. 6th, 1890, forty-nine thousand nine hundred and ninety-five ($49,995) dollars.

(Copy.)

The above is for money loaned to me by Thomas W. Means on account of my indebtedness as executor and trustee of the estate of A. Labrot, deceased, and it is agreed as part of the transaction by

which I have procured a loan of forty-five thousand dollars upon the foregoing note, that the amount thereof and all interest shall be paid from my interest as devisee or distributee of the estate of Thomas W. Means.

November 22nd, 1888.

WILLIAM MEANS.

(Copy.)

NEW HAVEN, CONN., *Nov. 9th*, 1888.

One day after date I promise to pay to the order of Thomas W. Means four hundred and ninety-seven and $\frac{13}{100}$ dollars, value received, with interest from date.

$497.13. WILLIAM MEANS.

Endorsed: Payment on this note Oct. 6th, 1890, five hundred and fifty-four and $\frac{4}{100}$ ($554.04) dollars.

213 (Copy.)

NEW YORK, *September 25th*, 1888.

One day after date I promise to pay to the order of Thomas W. Means seven thousand and four hundred dollars for value received.

$7,400.00. WILLIAM MEANS.

Endorsed: Payment on this note Oct. 6th, 1890, eighty-three hundred and one and $\frac{56}{100}$ ($8,301.56) dollars.

(Copy.)

NEW HAVEN, CONN., *Nov. 17th*, 1888.

One day after date I promise to pay to the order of Thomas W. Means the sum of sixteen hundred and twenty dollars for value received, with interest from date.

$1,620.00. WILLIAM MEANS.

Endorsed: Payment on this note Oct. 6, 1890, eighteen hundred and three and $\frac{33}{100}$ ($1,803.33) dollars.

(Copy.)

It is agreed as part of the transaction by which I have procured a loan of sixteen hundred and twenty dollars upon the foregoing note that the amount thereof and all interest shall be paid from my interest as devisee or distributee of the estate of Thomas W. Means.

$1,620.00. WILLIAM MEANS.

(Copy.)

ASHLAND, KY., *15th Oct.*, 1888.

MY DEAR WILL.: Yours of 4th inst. came duly to hand. Also have Maggie of 10th and Hunt of 11th inst., but have no account as to the Labrot estate. Must have your account and a settlement with the proper court. And a new trustee appointed. It is not for us to

recommend who the trustee may be. I can't help but be uneasy about this matter. A large sum of money must be paid, and soon. If not settled in father's lifetime it will be bad for you. I send herewith two letters from Conley received from Martha. Your account with father and myself and account "Adventure Cincinnati" sales and disposition so far as made of stocks, etc., received from
214 the Metropolitan National Bank receiver—and from yourself.

The Whisky Trust is going down in price and I propose to sell it. Expect to go to Cincinnati tomorrow and to see Baker and Hunt while there. In father's account you will notice the dates of payments of dividends. These were made while the stock yet stood in the name of Mr. Duckworth and were not remitted by him at the time of payment. As the intention of creditors to take judgments against you is apparent, they hoping to get them out of father's estate (your share) Moore and Hager advise me to take your notes in his favor at one day for payments made. That under his will as written, it is doubtful whether we could hold claim on an account. Seeing and believing this would be true was what induced me to take counsel with them as to the will, which they have examined carefully and authorities relating thereto. Make and send me your notes in father's favor—viz. dated 20th Aug. '88 at 1 day $5,041.67—dated 25th Sept. '88 at 1 day $7,400, see his account—and note dated 19th March '88 at 1 day $15,027.00 ($15,027.00) for paid your two notes to Ashland National bank. After seeing Baker and Hunt if they think it best may ask that you and Maggie come here, if not I may have to go to see you to get matters settled. Don't lose any time in getting up your account with Labrot estate. You will find items paid in father's account which I do not think I have advised you of, as to interest and exchange. If I come East can't afford to wait for making up a long account. Write Martha to send letters and papers, of which I know nothing, to you and thus save time.

All well.

Affectionately yours, JOHN MEANS.

X Q. 1639. You have stated, Mr. Means, in answer to Mr. Glidden's questions, in substance, that your father, at the time he made the last will in 1880, did not contemplate an equal division of his property among his living children. I will ask you what inequality he did contemplate?

A. He wanted to leave me more that he did the others.

X Q. 1640. In what way and for what purpose, if you know?

A. Well, as compensation for services I had rendered to him in taking care of his business.

215 Question and answer objected to.

X Q. 1641. In 1884, I believe, you have stated substantially that at your instance or request, he made all the others equal with yourself in the way of advancements; after that equalization of each up to one hundred thousand dollars, state whether or not he con-

templated an inequality of any kind as to any of the living children. If so, what?

Objected to.

A. Well, he didn't contemplate any inequality as to the living children then.

X Q. 1642. I believe you have stated substantially, heretofore, that all advancements that you received you understood, and at the time, were advancements. I will ask you whether the same was true as to each of the other children living?

Objected to.

A. I so understood that it was advancements—gifts.

Objected to.

X Q. 1643. Until the current accounts were opened, any items that the other children, as well as yourself, received that were to be paid back, as I understand from your testimony heretofore, were charged along with the items that were advanced, that is, in the same accounts. I will ask you why such items were so charged and mingled?

Objected to.

A. When he opened the first accounts, he had made no will, and he contemplated to make the division of his estate among his children and kept the account to show what each one had, and after the making of his will he made no change in the account. He kept on just in the way it had been begun.

X Q. 1644. What I wish to know is, why were the items that were advanced and those that were paid back not separated?

Objected to.

A. The accounts were kept on as they had been started. He was not a lawyer looking to what the courts might construe as to his accounts. It was kept for his own purpose and convenience. That is all the reason I know.

X Q. 1647. Look at question 652 and the answer to it, and if it needs any correction to make it comply with your understanding of the facts, make it.

216 A. Well, the first part of it, there are some words left out in the answer. It reads, "He did tell me that he had been advised." I answered that he had told me more than a month afterwards. He did tell me more than a month afterwards, that is, a month after the payment.

X Q. 1648. The latter part, "But I told him I could pay." What time does that refer to?

A. That refers to the time I was talking to him before the payment.

X Q. 1649. Had William Means ever told you, prior to the time more than a month afterwards that you have now fixed, that it was a mistake to make the payment—or anything equivalent to it?

A. No. The first time he told me was the last of March, when I saw him at his own home.

X Q. 1650. Question 740 is, "The same box your own papers were in?" Your answer is: "Certainly. But it was kept among his papers and parcels." To whom do you refer when you say "his" papers?

A. To my father, Thomas W. Means.

Adjourned to Wednesday, March 8th, 1893, at 10 a. m.

X Q. 1652. In answer to question 1555 the stenographer has made you to say in one place, "But it was his custom to keep a man to travel with him." I will ask you whether that is your answer, the answer that you gave as you understood it, and whether it accords with the facts as you understand them and remember; if not, state what is the fact?

A. I don't think that was my answer. It was not the fact that he kept a man to travel with him. He kept a man to take care of his horses and look after them, make fires and do light work about his house and place where he lived.

X Q. 1653. You have stated, in answer to Mr. Glidden's question in substance, that you received fifty thousand dollars par value of Means, Kyle & Company stock and that your father, I believe, paid some on that. State how much he paid of the fifty thousand dollars and how much you paid, if any?

A. He paid thirty-six thousand eight hundred and seventy-five dollars. Thirteen thousand one hundred and twenty-five dollars was paid by dividends out of the profits. I paid nothing.

X Q. 1654. Those dividends were earned after the transfer to you, or not?

A. Yes, sir. There was no transfer to me. I was partner from the beginning of the partnership.

217 X Q. 1656. In answer to question 1120 you state: "Mine, except the witness's signature." I will ask you if that answer is full; if not, make it so as you understand and understood at the time.

A. It should read "All except the witness's signature and my father's signature."

X Q. 1657. In answer to question 1607, which is, "Why the difference?" the stenographer has it down, "The reason that I proposed not to take William's note." I will ask you whether you intended to say "not" and whether in fact that represents the truth; if not, state what the truth and fact was.

A. I did not intend to say I did not propose to take William's note. I did not intend to say that. I did propose to take William's note to father as I have done in the other cases, which would make it then William's money.

X Q. 1658. Mr. Means, in answer to question 1254 you have said, "It is in my possession at Ashland," referring to the statement that McConville rendered of the claim which went to make up the one hundred and twenty-five thousand dollars. Is it a fact that that

paper is in your possession? If not, state the fact and how it was you came to answer as you did.

A. I left that statement with all the letters and papers, and when I answered I supposed it was among them. In looking over the papers of McConville to bring down I found it was not among them, and my son said he delivered it to William Means when he gave him up the other securities, so that it is not now in my possession.

X Q. 1659. Have you what purports to be a copy of that paper?

A. I have what purports to be a copy of that paper.

X Q. 1660. Will you produce that paper and submit it to opposing counsel for their inspection and use?

A. I did not make this copy and did not see it made. It is in William Means' handwriting and I am informed was made by him. I will let them inspect it and use it.

(Paper handed to opposing counsel.)

Redirect examination by Mr. GLIDDEN:

R. D. Q. 1662. State if you know what books that account appears in, if at all.

A. I have never seen the account, and I suppose they are in her own books.

R. D. Q. 1663. Have you in your possession or under your control any books or account which will show the items of the claim set forth in the answer in this case for moneys due your sister,
218 Mrs. Margaret Means, for moneys paid to or on account of William Means by her?

A. I have no books nor account nor control of books nor accounts that show that.

R. D. Q. 1665. Who kept the books of Miss Margaret Means?

A. I did, sometimes.

R. D. Q. 1666. Where is the books of Margaret Means now in which these items appear?

A. I don't know where they are.

R. D. Q. 1667. Are they not at Ashland and subject to your control?

A. I don't know whether they are in Ashland or not. I haven't seen them. They are not in my control nor subject to my control.

R. D. Q. 1668. Did you make the entries in those books—I mean in the books of Margaret Means—of the amounts paid by her to or on account of William Means?

A. I made some. I don't know; I don't suppose I made them all.

R. D. Q. 1671. You have testified, Mr. Means, if I remember correctly, of your father deeding to you certain lots in Cattlettsburg for the nominal consideration of one dollar, and as a gift. Does not the journal entry of that transaction show that those lots were conveyed to you as compensation for services?

Objected to as in chief.

A. Journal B, page 39, under date of the 17th of November, 1875,

has in my father's own handwriting the following: "The deed above to John Means above is for services rendered in tending to my business. (Signed) Thomas W. Means."

R. D. Q. 1672. Does that state the number of the lots there, Mr. Means?

A. It does.

R. D. Q. 1673. What was the number of the lots then conveyed?

A. Lot No. 16, lot No. 25, No. 29, No. 41, No. 55.

R. D. Q. 1674. Do you still own those lots, or have they or any of them been sold?

A. I have sold them all but one.

R. D. Q. 1675. For how much money?

A. I could not answer that. I got different prices for them.

R. D. Q. 1676. Approximate it, Mr. Means, as nearly as you can from recollection.

219 A. Well, I can't answer that from recollection. There were different prices.

R. D. Q. 1677. Have you any recollection at all as to the value, or what you realized from them, even approximately?

This line of examination objected to as in chief.

A. I only recollect as to one lot, and I think I sold that for $500. I don't recollect who got the others, nor the price.

R. D. Q. 1678. What is the one worth which you now hold?

A. I have not been able to get any price offered for it. Most of the lot has gone into the river.

R. D. Q. 1704. As I understand your testimony on the cross-examination, Mr. Means, it is, in substance, that your father intended originally to divide his estate equally between his children, and these charges against each of the children for money they received were to stand as charged against them, and were to be deducted from their portions of his estate. That, I understand, was his original intention. Is that correct?

A. That is correct. That was his intention.

R. D. Q. 1705. And that that remained his intention, if I understand you, up to the time, or about the time of the execution of the will in 1880?

A. This first knowledge I had of his change of mind in that, I think, was when he brought the will and showed it to me.

R. D. Q. 1706. That was shortly after its execution?

A. I think it was a day or two before.

R. D. Q. 1707. Then at that time, you say that your father's idea was to prefer you to the others because of your having staid with him, and your services, and that preference was to be made in the matter of the amounts you had received up to that time more than the others; that is correct, is it not?

A. Well, he was to make preference to me for that reason as stated. The amount he might thereafter fix. He did not say that he did not propose to give me or any of the others anything more; he might.

R. D. Q. 1708. You were not given anything more than the others,

except as it would appear that you had received more than the others during his lifetime; that was the only way in which you were preferred; is that not correct?

A. I don't understand your question.

R. D. Q. 1709. You were not, by the terms of the will,
220 given any more than the others unless you had received more by way of advancement than the others, were you?

A. No, I was not. The will speaks for itself.

R. D. Q. 1710. Then the advantage to you, if any, would grow out of the fact of your having up to that time, or up to the time of his death, if it so appeared, received more from the estate than the others had received; that would be the only way you could obtain any advantage; that is correct, is it not?

A. That would be the way I would get the advantage.

R. D. Q. 1711. I further understand you to testify that you suggested to your father that he ought not to make any difference; that you insisted that your brother and sisters should be made equal with you, so that they would share equally in your father's estate?

A. That is true. I did insist.

R. D. Q. 1712. As I understand you, in 1884 your father, at your instance and request, made the account equal?

A. That is not true, as the question is put.

R. D. Q. 1713. In answer to question 1483, which was a question put to you by your counsel on cross-examination, you state, at the time of making that will, "I had more than twenty thousand dollars more than William had, and still further amounts more than my sisters, and I insisted on my father making the accounts equal or nearly so, and kept at him until that finally was done at my suggestion. That is correct, is it?

A. That is correct.

R. D. Q. 1714. Mr. Means, was not the right to have the use of the money from the time it was given to you and charged to you upon the books, given to each of the other and charged to them upon the books, the right to have that money without interest; was not that a gift—the use of that money?

Answer objected to as asking for a legal conclusion instead of a fact; also as evidence-in-chief; also upon the ground that it is irrelevant to any question at issue in the case.

A. It was a gift of value.

R. D. Q. 1715. Mr. Means, when you came to suggest an equalization between yourself and your brother and sisters in 1884, were you aware of the fact that you then had received a very much larger amount in that gift of value—the use of the money—over and above them than the difference between your accounts?

221 Objected to for the same reason.

A. I knew that I had some advantage in it.

R. D. Q. 1716. To what extent? Could you know?

A. No. I never made any calculation.

R. D. Q. 1717. Suppose, Mr. Means, that a calculation of interest,

debit, and credit upon your account to 1884, would show a debit interest balance against you of one hundred and eighty-one thousand nine hundred dollars and sixty-six cents and the debit balance of interest against William Means sixty-eight thousand one hundred and thirty-five dollars and fifty-three cents; against Miss Margaret A. Means of eighty-five thousand one hundred and thirty dollars; James Culbertson twenty-four thousand eight hundred and forty-four dollars and fourteen cents, and Mary A. Adams seventy-nine thousand and eighty-three dollars. Now, did it occur to you in equalizing with your brother and your sisters in 1884 that that very large discrepancy in your favor should be considered, showing an advantage by you over your brother of about one hundred and fourteen thousand dollars and over each of your sisters of a much larger amount?

Objected to for the same reason.

A. I don't know that a calculation would show that. I never made any such calculation; was always told that no interest was to be reckoned. I did not take that into consideration at all.

R. D. Q. 1718. Mr. Means, during nearly all of this period, from '55 up to '84, money was worth six per cent. interest at Ashland and a great deal of the time more, was it not?

Objected to for the same reason.

A. It was worth six per cent. or more; no, not all the time; not always more.

R. D. Q. 1719. Do you mean that it was always worth six, but not always more than six?

A. I mean that some of the time it was worth six per cent. or more than six per cent., but not all of the time up to '84 worth more.

R. D. Q. 1720. Was it all the time worth six per cent.?

A. I think not. There were times when money was loaned at less than six.

R. D. Q. 1721. Prior to 1884?

A. Yes, sir.

R. D. Q. 1722. When and for what length of time?

A. Oh, I can't tell.

222 R. D. Q. 1723. Wasn't the average value of money during that time to exceed six per cent. at Ashland from '55 to '84?

A. I don't know whether it would or not.

R. D. Q. 1725. The value of the gift of the use of money without interest is represented correctly by a computation at the rate of interest at which money was fairly worth at that time, isn't it?

A. I think it might be.

R. D. Q. 1726. Then, if the estate was to be distributed now and a settlement of your account, debiting and crediting interest would show a debit balance of two hundred and fifty thousand seven hundred and four dollars and thirty-seven cents; that would be an estimate of the value of that gift of the use of the money without interest, wouldn't it?

Answer objected to on the same ground.

A. I don't know that it would show that amount to begin with. That would be, I think, simply an estimate.

R. D. Q. 1727. Then, if the interest computation made upon the account of William Means to the present time should show a debit balance of one hundred and eight thousand seven hundred and thirty-three dollars and twenty-four cents against his account, that would show the value of that gift to him, would it not?

Objected to for the same reason.

A. It would show that in addition to what was given. I don't know what might be the value to him.

R. D. Q. 1728. If the account of Mrs. Adams, your sister, was debited and credited with interest on each of the items, relatively, to 1884, and it showed a debit balance of interest against her of seventy-nine thousand and eighty-two dollars and ninety-seven cents, would not that show the value of the gift of the use of that money without interest, to her?

The same objections.

A. Well, I think it would show the same addition to her account, but whether of that much value, I don't know.

R. D. Q. 1729. Well, now, Mr. Means, if the figures are correct which I have given you, and I will state that they are the result of a calculation made by an expert book-keeper and reported to me as correct, deducting the amount of the interest debit of William Means from the amount of your interest debit, would amount to a difference against William Means and in your favor of one
223 hundred and forty-one thousand nine hundred and seventy-one dollars and thirteen cents. Now do I understand you that your idea was, or is, that that is dividing the estate equally between yourself and William Means as relative heirs?

Objected to for the same reasons.

A. I don't think it would be equal, if all that is true.

R. D. Q. 1730. Yet I understand you, Mr. Means, that it was your intention, and the intention of your father, after you had suggested it to him in 1884, to so adjust matters as that the estate would be equally divided between the children; that was the idea, was it?

A. No; not in making an interest calculation, it was not, but making an equal division as he had kept his account.

R. D. Q. 1731. Then, when you were making this so-called equal division, did you realize that you were retaining this very large advantage over the other heirs?

A. I did not. I did not consider that I owed any interest or that they did; neither did my father.

R. D. Q. 1732. Wasn't your idea at that time, Mr. Means, and the idea of your father, in making that adjustment, one of equality amongst the children; wasn't that the idea?

A. That was the idea—to make one of equality.

R. D. Q. 1733. You spoke about you taking fifty thousand dollars

of stock in Means, Kyle & Co., or an interest in Means, Kyle & Co. of fifty thousand dollars, and your father paying thirty-six thousand dollars. Did William take an interest there at the same time you did?

A. He did.

R. D. Q. 1734. How much was paid on William's interest by your father? The amount, as I remember, that William took, was the same as you took, fifty thousand dollars?

A. No. That is not correct. William had seventy thousand dollars.

R. D. Q. 1735. At the origination of it?

A. Of the partnership.

R. D. Q. 1736. And you had fifty thousand?

A. I had fifty thousand.

R. D. Q. 1739. I mean at the time?

A. William got the same proportion of profits that I did, exactly. He paid thirty-six thousand and some hundred dollars—what I testified there shows—for me, and thirteen thousand and some hundred dollars of its profits, made fifty thousand dollars. He paid in exactly the same proportion for William.

224 R. D. Q. 1740. Only William took seventy thousand and you took fifty thousand?

A. William had seventy and I had fifty, and the books show it. At the sale, the books show here what William got.

R. D. Q. 1741. Mr. Means, where are the original notes of which copies are attached as Exhibit 23?

A. I don't know.

R. D. Q. 1742. Where did you get these copies?

A. From the administrator, Thomas M. Adams.

R. D. Q. 1743. How were you enabled to testify that they were copies?

A. My answer shows there that I testified from recollection, that I believed they were substantial copies, that I did not make the copies.

R. D. Q. 1744. And you have no knowledge or information as to where the notes are now?

A. I have not.

R. D. Q. 1745. Have you any knowledge or information as to what became of the original notes?

A. The administrators tell me that they delivered them to William Means. I have no knowledge of what he has done with them.

R. D. Q. 1746. When they took the receipt for one hundred and thirty-six thousand dollars?

A. When they made settlement with him.

R. D. Q. 1752. I see several of these notes dated at New Haven, Connecticut, bearing different dates. Were they, or not, all signed at the same time by William Means?

A. What notes?

R. D. Q. 1753. One note dated New Haven, November 9th, 1888, for $75,000, one dated New Haven, November 22nd, for $45,000, one dated November 9th, 1888, for $479.13, one November 17, 1888, for

$1,620. Now, the question is, whether they were all executed at the same time at New Haven?

A. No; they were not.

R. D. Q. 1754. Were they executed while you were at New Haven?

A. Two of them were.

R. D. Q. 1755. Which two?

A. $497.13 the ninth; $75,000 dated the ninth. I am sure the $75,000 was executed on that day and I think the other was at the same time.

R. D. Q. 1756. When was the one of $1,620 executed, dated November 17th?

225 A. It was received at Ashland on or about the 27th of November, 1888. I suppose executed a few days before. I did not see it written.

R. D. Q. 1757. The note of November 9th, 1888, for $75,000 was for the $75,000 which you had at that time deposited with McConville, was it not?

A. It was.

R. D. Q. 1758. When that $75,000 was returned to you, did you return that note of $75,000 to William Means?

A. I did not.

R. D. R. 1759. These notes which are attached to Exhibit 23 are the notes for the amounts which go to make up the $280,000 referred to in the answer of the administrators, are they not?

A. I suppose so.

It is stipulated that these notes, Exhibit 23, represent the amount set forth in the answer of the administrators as the aggregate amount advanced to or on account of William Means.

R. D. Q. 1760. Mr. Means, what was the note of August 20th, 1888, for $5,041.67 given for?

A. It was a debt paid to the Circleville bank, I think, note and interest.

R. D. Q. 1762. Now, the note of $2,713.88, dated December 3, 1888?

A. That was for New York draft remitted him, payable to Warren Higley, fifteen hundred dollars; Cincinnati draft remitted George Gerke, twelve hundred dollars, and draft remitted G. R. Dudley for Labrot tax, thirteen dollars and eighty-eight cents; as appears on page 194 of Journal B.

R. D. Q. 1763. For what was the money remitted to Gerke?

A. That he owed Gerke.

R. D. Q. 1764. The note, Yellow Springs, Ohio, March 19, 1888, one day after date, for fifteen thousand and twenty-seven dollars, which was given to take up two notes, one for six thousand dollars and the other of nine thousand dollars, to the Ashland National Bank of Kentucky, was it not?

A. It was given to take up those two notes with interest accrued on them after maturity.

R. D. Q. 1765. What collaterals did the Ashland National bank hold to secure those two notes?

A. Two hundred and twenty shares Metropolitan National bank stock.

R. D. Q. 1766. What become of that collateral?

926 A. The administrators have that yet. I reported that the other day as not having been surrendered.

R. D. Q. 1767. Do you know the amount of dividend in the aggregate that was paid on that stock?

A. The notes show. I reported the other day in my testimony. I reported what had been—all the dividends received—I cannot tell what day. It was in the other room yonder. You had an exhibit and it is marked Exhibit one or two, or something.

R. D. Q. 1768. Wasn't the dividends paid upon that stock nearly, if not quite, sufficient to pay that fifteen-thousand-dollar note?

A. No, it was not.

R. D. Q. 1770. Note of November 9, 1888, one day for $497.13. For what was that given?

A. It is for a remittance to the Countess D'Adhemar, $197.13 and for $300 remitted to Mrs. Martha E. C. Means.

R. D. Q. 1771. From an examination of the record, I see that an interlineation has been made in the answer to question 94, the answer having originally been, "I sold back to my father and it was afterwards given back to me," the interlineation making it read, "I sold back part to my father and part was afterwards given back to me"—interlineations having been made by Mr. Perin—Mr. Perin's stenographic notes showing the original answer to have been as written in the record; I understand that it was changed because it was not, as you claim, correct. If it be true that the stock was not all transferred to your father, how much was transferred to your father and how much was given back to you?

A. Four hundred shares, making twenty thousand dollars of the capital stock at par, was transferred to my father. On this forty-five per cent. had been paid, making nine thousand dollars paid, for which I got credit. Afterwards he transferred back to me two hundred shares which had been paid up in full—ten thousand dollars. For this he charged me five thousand dollars.

Receipts.

1890.			
Aug.	5th.	Cash in banks per inventory of Aug. 5, 1890	$50,382.70
	23.	Interest on Mt. Auburn Cable R'y Co. bonds	100.
927			
Sept.	22.	Dividend No. 15 A. C. & L. R'y Co. 1 %	356.
	23.	Dividend No. 14 Low Moor Iron Co	600.
		S. S. Savage note paid in full	700.
		Interest on S. S. Savage note	67.37
Oct.	6.	Retained from Wm. Means' legacy and share and applied on his note set out in inventory as follows:	
		On due bill No. 215, dated Feb. 15, '88, of Wm. Means	41,027.46
		On above due bill interest to Oct. 6, 1890	10,650.44
		On note of Wm. Means dated M'ch 19, '88	5,127.
		On above note interest to Oct. 6, 1890	1,456.64
		On note of Wm. Means No. 219, dated Aug. 20, 1888	5,041.67

		On note of Wm. Means No. 219, interest to Oct. 6, 1890....	643.65
		On note of Wm. Means No. 220, dated Sept. 25, '88.....	7,400.
		On note of Wm. Means No. 220, interest to Oct. 6, 1890....	901.56
		On note of Wm. Means No. 221, dated Oct. 24, '88.....	2,100.
		On note of Wm. Means No. 221, interest to Oct. 6, 1890....	245.70
		On note of Wm. Means No. 222, dated Nov. 9, '88.....	497.13
		On note of Wm. Means No. 222, interest to Oct. 6, 1890....	56.91
		On note of Wm. Means No. 223, interest to Oct. 6, 1890....	6,075.50
		On note of Wm. Means No. 225, dated Nov. 17, '88	1,620.
		On note of Wm. Means No. 225, interest to Oct. 6, 1890 ..	183.33
		On note of Wm. Means No. 226, dated Nov. 22, '88.....	45,000.
		On note of Wm. Means No. 226, interest to Oct. 6, 1890...	4,995.
		On note of Wm. Means No. 227, dated Dec. 3, 1888	2,713.88
		On note of Wm. Means No. 227, interest to Oct. 6, 1890....	299.88
228	16.	Note of Thomas A. Mack paid in full.....	10,000.
		Note of Thomas A. Mack paid in full.....	10,000.
		Interest 7 % on notes of Thomas A. Mack to July 22, '90, being date of his tender of payment.....	2,012.39
	28.	Means & Russell Iron Co., balance.....	8,715.55
	30.	Ashland Coal and Iron Railway Co., balance.....	1,701.15
		Interest on Ashland Coal and Iron Co., account.....	59.82
Dec.	8.	Interest on Mt. Auburn Cable R'y Co. bonds, semi-annual..	50.
		Interest on Eureka bonds, 7 %, semi-annual.....	875.
	23.	Dividend No. 15 Low Moor Iron Co., paid Dec. 15.....	600.
		Carried for'd to folio 2.....	$171,873.03
1891.		Brought for'd from folio 1	$222,255.73
Jan.	2.	Dividend No. 35 Ashland Nat'l bank.....	1,284.
		Dividend No. 31 Sinton & Means, less fifty ($50) dollars costs in making legal demand for payment of California reclamation bonds.....	334.
	16.	Dividend of Second Nat'al bank, Ironton, 6 Nov., 3 %	867.
	14.	Cash from Scioto Valley railroad for sand taken from French Grant farm, presumably prior to T. W. Means' death....	297.12
		Dividend No. 129 Little Miami R. R.....	41.
		Dividend No. 130 Little Miami R. R.....	41.
		Dividend No. 131 Little Miami R. R.....	41.
	24.	Dividend No. 16 Ashland Coal and Iron R'y Co.....	356.
	29.	Cash from sale of six hundred and thirty (630) shares of stock of Kentucky Iron, Coal Mfg. Co. at $50.00 per share, the par value, sold as follows:	
229		100 shares sold to John Russell.....	5,000.
		100 shares " " D. D. Geiger.....	5,000.
	31.	100 shares " " A. C. Campbell.....	5,000.
Feb.	2.	100 shares " " Gov. S. B. Buckner.	5,000.
		100 shares " " Jno. F. Hager.....	5,000.
	5.	100 shares " " Geo. Adams.....	5,000.
	4.	30 shares " " Ashland Improvement Co.....	1,500.
	16.	Dividend of Portsmouth Gas Light Co.....	105.
	11.	Cash from sale of one hundred and fifty (150) shares of stock of the Low Moor Iron Co. sold as follows, at $150.00 per share:	
		Sold 50 shares to Mrs. M. A. Adams.....	7,500.
		Sold 50 shares to John Means.....	7,500.
		Sold 50 shares to Miss M. A. Means.	7,500.
M'ch	16.	Dividend No. 132 Little Miami R. R. *R.* Co.....	41.
	17.	Cash from sale of forty-one (41) shares of Little Miami R. R. stock at $82.½ per share (par value $50.00 per share) less commission of ¼ of 1 %.....	3,387.63
Ap'l	25.	Cash from sale of Second Nat'l Bank of Ironton, Ohio, stock, one hundred and eleven (111) shares at $103.00 per share, sold as follows:	
		100 shares sold to Burr & Austin, trustees..	10,300.
		Carried forward to folio 3.....	293,250.48

Receipts.

		Brought forward from folio 2	$293,350.48
1891.			
Ap'l	25.	10 shares sold to H. C. Burr & Co.	1,030.
	28.	1 share sold to H. C. Burr & Co	103.
May	4.	Dividend of Second Nat'l Bank of Ironton, 3 %	534.
	7.	Interest on Eureka bonds, semi-annual	875.
June	22.	Dividend of Ashland Coal & Iron R'y Co., N. 17, 1 %	356.
July	1.	Dividend of Ashland Nat'l bank, No. 36, 5 %	1,284.
230			
Sept.	8.	Cash from sale of twenty-five (25) bonds of Eureka Company, of Oxmoor, Ala., at $1,000 each.	25,000.
		Interest 160 days on Eureka Company bonds at 7 %, $767.12, less ½ % commission, $62.50 paid Irwin & Co	704.62
Oct.	9.	Dividend of Ashland Coal & Iron Co., No. 18 1 %	356.
	17.	Interest, semi-annual, on Mt. Auburn Cable R'y bonds	50.
	29.	Cash from sale of Cincinnati, Portsmouth, Big Sandy & Pomeroy Packet Co. stock, two hundred and sixty (260) shares at $80 per share, sold to Irwin, Ellis & Ballman	20,800.
Nov.	2.	Dividend on Second Nat'l bank, No. 50, 3 %	534.
1892.			
Jan'y	2.	Dividend of Ashland Nat'l bank, No. 37, 5 %	1,284.
1891.			
Dec.	1.	Interest on Mt. Auburn Cable R'y Co. bonds, semi-annual	50.
1892.			
Jan'y	19.	Interest on Mt. Auburn Cable R'y Co. bonds from Dec. 1 to Jan'y 19	13.70
		Cash from sale of Mt. Auburn Cable R'y Co. bonds to John Means at par and accrued interest, as above	2,000.
		Cash from sale of two hundred and fifty-six and ½ shares of Ashland Nat'l bank stock sold at $142.50 per share as follows:	
	20.	100 shares to M. H. Huston	14,250.
	21.	52 shares to W. Honshell	7,410.
		34 shares to John Russell	4,845.
		32 shares to W. C. Richardson	4,560.
	22.	5½ shares to S. A. Colvin	826.50
		12 shares to W. T. Hord & Bros.	1,710.
		21 shares to C. W. Means	2,992.50
	29.	Dividend of Ashland Coal & Iron R'y Co., No. 19	356.
May	3.	Dividend of Second Nat'l Bank of Ironton, O., No. 51, 3 %.	534.
231			
June	15.	Cash from sale of one hundred (100) bonds of $500 each of levee district No. 5 of Sutter Co., California (reclamation bonds, with coupons of $20 each attached and detached).	
		Carried forward to folio 4	$385,808.80

Receipts.

1892.		Brought forward from folio 3	$385,808.80
June	15.	Sold as follows:	
		75 reclamation bonds with 9 coupons attached to each bond and 1,992 detached coupons sold to Thomas A. Mack, of Cincinnati, O	5,625.
		25 reclamation bonds with 9 coupons attached to each bond and 657 detached coupons sold to Mary A. Adams	1,875.
	27.	Dividend of Ashland Coal & Iron R'y Co., No. 20	356.
		Dividend of Portsmouth Gas Co	70.
July	30.	Dividend of Sinton & Means, No. 32	3,617.14
Nov.	—.	Dividend of Second Nat'l Bank of Ironton, O., No. 52, 3 %	534.
		Dividend of Ashland Coal & Iron R'y Co., No. 21	356.

22.	Cash from sale of seven hundred and twelve (712) shares of stock of the Ashland Coal & Iron R'y Co., $35 per share, sold as follows:	
	178 shares to John Means	6,230.
	178 shares to Mary A. Adams	6,230.
	178 shares to Margaret A. Means	6,230.
	178 shares to Robert Peebles, trustee	6,230.
22.	Cash from sale of one hundred and twenty (120) shares of the Second Nat'l Bank of Ironton, O., stock sold at $100 per share as follows:	
	30 shares to John Means	2,000.
	30 shares to Mary A. Adams	3,000.
	30 shares to Margaret A. Means	3,000.
	30 shares to Robert Peebles, trustee	3,000.
232		$435,161.94

1893.
Jan'y 21. To balance.

E. C. MEANS,
T. M. ADAMS,
Administrators, with Will Annexed, of Estate of Thos. W. Means, Deceased.

Subscribed and sworn to before me this 21st day of Jan., 1893.
M. H. HOUSTON, *J. B. C. C.*

Disbursements.

Brought forward from folio 3	$434,310.60
Balance	851.34
	$435,161.94

Disbursements.

1890.

Aug. 8.	Paid Jno. O'Kelly, livery charges for funeral	74.	Voucher 1
9.	Paid Western Union Telegraph Co.	5.76	Voucher 2
9.	Paid J. U. McCall	4.38	Voucher 3
15.	Paid Dr. James M. Montmollin	29.35	Voucher 4
20.	Paid T. H. Bullington, undertaker	405.	Voucher 5
20.	Paid J. H. Poage, C. B. C. C	11.25	Voucher 6
20.	Paid J. H. Poage, C. B. C. C	3.55	Voucher 7
23.	Paid Halsey Burr	10.	Voucher 8
30.	Paid Dr. J. H. Wade	10.	Voucher 9
Sept. 1.	Paid Julius L. Anderson	10.	Voucher 10
5.	Paid Chas. C. Rickoff	64.40	Voucher 11
	Paid Woodland Cemetery	3.	Voucher 12
9.	Paid M. A. Adams & M. A. Means' joint account	282.46	Voucher 13
Aug. 12.	Paid Scioto county, O., June taxes, Green Tr.	33.26	Voucher 14
233			
12.	Paid Scioto county, O., June taxes, 5th ward	20.88	Voucher 15
13.	Paid note of T. W. Means in favor of Mary A. Adams, dated Sept. 26, 1888	1,500.	Voucher 16
	Paid interest on M. A. Adams' note	168.96	
14.	Paid note of T. W. Means in favor of W. W. Culbertson, dated July 13, 1888	3,156.21	
	Paid interest on W. W. Culbertson note	406.39	Voucher 17
26.	Paid State and county taxes, 1890	682.31	Voucher 18
Sept. 30.	Paid city taxes, Ashland, 1890	90.80	Voucher 19
Oct. 4.	Paid R. C. Burns	25.	Voucher 20
6.	Paid Wm. Means, legatee, as cash on his distributive share, his notes with interest calculated to Oct. 6, 1890, as follows:		
	Due bill of Wm. Means, No. 215, dated Feb. 15, '88, $41,027.46 & int	51,677.90	
	Note of Wm. Means, dated March 19, '88, $5,127 & int	6,583.64	

		Note of Wm. Means, No. 219, dated Aug. 20, '88, $5,041.67 & interest	5,685.32	
		Note of Wm. Means, No. 220, dated Sept. 25, '88, $7,400 & interest	8,301.56	
		Note of Wm. Means, No. 221, dated Oct. 24, '88, $2,100 & interest	2,345.70	
		Note of Wm. Means, No. 222, dated Nov. 9, '88, $497.13, & interest	554.04	Voucher 21
234		Interest of note of Wm. Means, No. 223	6,075.50	
		Note of Wm. Means, No. 225, dated Nov. 17, '88, $1,620 & interest	1,803.33	
		Note of Wm. Means, No. 226, dated Nov. 22, '88, $45,000 & interest	49,995.	
		Note of Wm. Means, No. 227, dated Dec. 3, '88, $2,713.88 & interest	3,013.76	
	8.	Paid John Means, legatee	8,000.	Voucher 22
		Paid M'rg'r't A. Means, legatee	8,000.	Voucher 23
		Carried forward to folio 2	159,032.71	
		Brought forward from folio 1	159,032.71	
Oct.	8.	Paid Mary A. Adams, legatee	8,000.	Voucher 24
		Paid Robert Peebles, trustee	8,000.	Voucher 25
	27.	Paid John Means, legatee	7,000.	Voucher 26
		Paid Mary A. Adams, legatee	7,000.	Voucher 27
		Paid M'rg't A. Means, legatee	7,000.	Voucher 28
		Paid Robert Peebles, trustee	7,000.	Voucher 29
Nov.	6.	Paid C. F. Friel, C. B. C. C	8.50	Voucher 30
	12.	Paid S. Casebolt	34.05	Voucher 31
Dec.	13.	Paid C. W. Anderson	7.	Voucher 32
	24.	Paid John Means, legatee	4,500.	Voucher 33
		Paid Mary A. Adams, legatee	4,500.	Voucher 34
		Paid M'rg't A. Means, legatee	4,500.	Voucher 35
		Paid Robert Peebles, trustee	4,500.	Voucher 36
	27.	Paid Chas. Mendenhall, taxes Roan Mt. Steel		
235		& Iron Co.	42.50	Voucher 37
	31.	Paid D. Steele	2.	Voucher 38
1891.				
Jan.	20.	Paid Boyd Co. circuit court clerk	14.65	Voucher 39
Feb.	6.	Paid John Means, legatee	8,500.	Voucher 40
		Paid Mary A. Adams, legatee	8,500.	Voucher 41
		Paid M'rg't A. Means, legatee	8,500.	Voucher 42
		Paid Robert Peebles, trustee	8,500.	Voucher 43
	16.	Paid John Means, legatee	5,500.	Voucher 44
		Paid Mary A. Adams, legatee	5,500.	Voucher 45
		Paid M'rg't A. Means, legatee	5,500.	Voucher 46
		Paid Robert Peebles, trustee	5,500.	Voucher 47
	26.	Paid S. Casebolt	2.	Voucher 48
May	15.	Paid John Means, legatee	4,600.	Voucher 49
		Paid Mary A. Adams, legatee	4,600.	Voucher 50
		Paid M'rg't A. Means, legatee	4,600.	Voucher 51
		Paid Robert Peebles, trustee	4,600.	Voucher 52
Sept.	12.	Paid State and county taxes for 1891	2,175.05	Voucher 53
Oct.	5.	Paid Jno. F. Pogue	16.68	Voucher 54
	12.	Paid John Means, legatee	6,000.	Voucher 55
		Paid Mary A. Adams, legatee	6,000.	Voucher 56
		Paid M'rg't A. Means, legatee	6,000.	Voucher 57
		Paid Robert Peebles, trustee	6,000.	Voucher 58
	31.	Paid Col. L. T. Moore, att'y. for legal advice	200.	Voucher 59
Nov.	2.	Paid John Means, legatee	5,000.	Voucher 60
		Carried forward to folio 3	326,933.14	
236		Brought forward from folio 2	326,935.14	
Nov.	2.	Paid Mary A. Adams, legatee	5,000.	Voucher 61
		Paid M'rg't A. Means, legatee	5,000.	Voucher 62
		Paid Robert Peebles, trustee	5,000.	Voucher 63

	12.	Paid city taxes for '91	339.90	Voucher 64
		Paid sheriff Boyd Co.	2.10	Voucher 65
	20.	Paid Joseph C. Finnell, clerk	3.15	Voucher 66
Dec.	—.	Paid Huff & Keys, advertising	2.	Voucher 67
Dec.	11.	Paid Julius L. Anderson, attorney, for legal advice	200.	Voucher 68
1892.				
Jan.	14.	Paid Jno. F. Hager, attorney, for legal advice	200.	Voucher 69
June	1.	Paid Bath Avenue Gas Light Co.	184.10	Voucher 70
July	6.	Paid John Means, legatee	8,900.	Voucher 71
		Paid Mary A. Adams, legatee	8,900.	Voucher 72
		Paid M'rg't A. Means, legatee	8,900.	Voucher 73
Sept.	17.	Paid Robert Peebles, trustee	8,900.	Voucher 74
	19.	Paid State and county tax- for year 1892	268.71	Voucher 75
Nov.	19.	Paid M. N. Hambleton, cutting inscription	35.	Voucher 76
	22.	Paid John Means, legatee	6,230.	Voucher 77
		Paid Mary A. Adams, legatee	6,230.	Voucher 78
		Paid M'rg't A. Means, legatee	6,230.	Voucher 79
		Paid Robert Peebles, trustee	6,230.	Voucher 80
		Paid John Means, legatee	3,000.	Voucher 81
		Paid Mary A. Adams, legatee	3,000.	Voucher 82
237		Paid M'rg't A. Means, legatee	3,000.	Voucher 83
		Paid Robert Peebles, trustee	3,000.	Voucher 84
M'ch	19.	Paid Jos. C. Finnell, clerk U. S. court	6.50	Voucher 85
July	12.	Paid "The Ironton Register," advertising	1.	Voucher 86
1893.				
Jan.	19.	Paid city taxes, 1892	55.70	Voucher 87
	20.	Paid Julius L. Anderson, legal advice	500.	Voucher 88
		Paid John F. Hager	500.	Voucher 89
	21.	Paid E. C. Means, traveling expenses, etc.	56.	Voucher 90
		Paid T. M. Adams, traveling expense-	94.90	Voucher 91
		Paid E. C. Means, commission	8,703.20	Voucher 92
		Paid T. M. Adams, commission	8,703.20	Voucher 93
		Carried forward to folio 4	434,310.60	

Exhibit 27.

March 10th, 1893. B. Perin, Sp. Ex.

April 3d, 1888.

My Dear John: Your welcome letter of 2nd received, and am glad to learn you found everything right and all well at home. Have a cheerful letter from Mr. Baker, who says nothing however as to future movements in my case. I hope no time will be lost in adopting some plan and going to work on it vigorously, otherwise the present delay will be of no avail. Mr. Hunt writes us that he had written you before your last visit, asking for a conference, but that you had not called or announced your presence in the city. It is probably the case that you did not receive his letter before leaving home, otherwise I think it politic to make some explanation as he was the first counsel employed and has done many kind acts apart from professional services in the case. He and Mr. Baker are working nicely together, but it is important to have harmony
238 in every respect. Our time for work may be short and it is essential that we lose no advantages. We are about as well as usual. Pearl is obliged for your advice about the crutch, as she might have neglected it to her injury. All send love, and remain,

Sincerely yours, —— ——.

EXHIBIT 28.

Cincinnati, March 10th, 1893. B. Perin, Sp. Ex.

OCT. 29TH, 1888.

MY DEAR JOHN: I have a letter from Martha, she says she is out of money, and seems greatly troubled about it. Please send her $600 as soon as you receive this.

She informs me that she has placed her property in the hands of an agent for sale.

Yours affectionately, WILLIAM MEANS.

EXHIBIT 29.

Cincinnati, March 10th, 1893. B. Perin, Sp. Ex.

NEW YORK, *December 7th*, 1888.

John Means, Esq., Ashland, Ky.

DEAR SIR: You are hereby authorized and requested to remit to Fleurie Antoinette Seignouret, Bordeaux, France, and Josephine Marguerite (Countep-e) d'Adheinar, 10 Rue Lesner Ave., Bois du Boulogne, Paris, France, income from the estate of A. Labrot and from funds divided between the said C'tesse d'Adhimar and Mad. Seignouret, the heirs of said Labrot, as their interests may appear until final settlement unless otherwise instructed.

Yours truly, WILLIAM MEANS,

Executor of the Estate of A. Labrot, Deceased.

EXHIBIT 31.

Cincinnati, March 10th, 1893. B. Perin, Sp. Ex.

AUG. 1ST, 1888.

MY DEAR JOHN: Yours of July 28th just received, and I agree with you that certificate 171 Metropolitan Bank stock should be paid and surrendered to Mr. McConville. It would
239 be well to notice date of same, find out when reissued and see if I got credit for the proceeds. The custom in the bank was to cancel old certificate when new one was issued, but as this was done by a clerk who drew them up, it is well enough to look over the transaction.

As to the matter of the Shaeffer certificate of Findlay property, I am at a loss to know why it was not handed to you. Indeed I do not remember the form of it, and would hardly know where to look for it. We are as well here as usual and the weather exceedingly variable.

Sometimes very hot, then again very cold without an hour's notice. Love to all.

Yours affectionately, WILLIAM.

A duplicate certificate or paper might be handed to Mr. Kerper until original can be found.

W.

EXHIBIT 32.

Cincinnati, March 10th, 1893. B. Perin, Sp. Ex.

APRIL 2ND, 1889.

MY DEAR JOHN: We are today in receipt of your letter, and a joint communication urging our return to save bond, and hasten to reply.

We immediately cabled Glenn to consult you and give final instructions, as we think it best not to offend counsel at this period lest they might abandon the case. We have also written to the Netherlands for rates of passage, as this is much the cheapest route and our funds are now quite limited. I cannot tell you how grieved I am at your distress and how willing I am to relieve you from the great burden you are carrying, by appearing when and where needed. We would have responded at once to your telegram had not Glenn asked us to remain until otherwise instructed. When your letter came today we telegraphed Glenn to consult you before answering whether we should start Saturday, which we hope will give abundant time for everything, and we expect to leave Amsterdam accordingly. I agree with you that Mrs. Little means mischief, and do not see how I would have promoted her by writing.

It is plain she is angry that any money should have been expended on her husband except life insurance, and all her action from the beginning are in evidence to this effect. As to her
240 I am now unable to decide anything unless it is that she wished separation from the start. And her hostility to my own family and the Howes is a part of the plan only. That is to be done. I find myself utterly unable to determine, and can but hope that she may not think it good policy to resort to extreme measures. I am sure, however, that to her we are indebted for great hindrance in the case, and were it not for fear of her own exposure, would have defeated us long ago.

My great grief now is not for myself, but for you and the other dear ones who have become involved in the common trouble, and I am anxious to do what will afford the greatest relief at the earliest moment. Howe's letter to you indicating October for appearance, was entirely his own volition and did not have my approval. I desired him to say that I was always ready, and that under no circumstances should there be any forfeiture through any act of mine, but he thought he knew best and lawyer-like proceeded accordingly. As to what I may do on arrival must depend on circumstances. It is not a pleasant subject to contemplate, but is best to face things, and I will endeavor to act a manly part and if possible, without the slightest compromise to those who have stood by me in my adversity.

Once more I must say that I am deeply grieved at your distress, too much to dwell upon; which only — to a misery already beyond description. My sleep is without rest and my days an agony, which I would endure with resignation could I but relieve you and the others who have suffered.

Conscious of no intention to do wrong in the past, I fear nothing if justice only can be obtained, and do not shrink from the tenth.

APRIL 23RD.

This was commenced before starting and I think it due you to send it.

Yours of the 18th was handed me yesterday and occasioned me surprise at least. You will hear no more on the subject of the payments. I only wish we had been more selfish and paid when something would be done for us as a consideration.

What I am surprised at is the Judge, which reminds me that Mollie and I were not pleased with some developments just before he left us. If he had not astonished me then I could not but suppose you have not understood each other. As to the matter of fees for Labrot settlement, it occurred to me to write to Mr. Hunt, though I did not — that any reduction of his fees would be that
241 much saved to us. He never even asked me to guarantee any amount, and as to the whole amount to be paid if he has obeyed my instructions the sum has not been increased, notwithstanding the changes in the account.

I found it necessary to make the settlement up to July 1st and informed him that I had turned everything over to you but $20,000, before that time. You had told me I could assure the heirs the estate was all right, and on his account I did not think it necessary to explain everything to him. You may remember that I wrote you I had more anxiety about the trust than everything else, and now desirous I was that you would help me to keep my secret even from Mr. Hunt. I presume this has not been done, though you still might save me some mortification by stating that in the confusion attending my troubles I neglected to state that any particular assets were to be kept separate. As to fees or pay to the Judge for going abroad his proposition to me was to give him eight or nine hundred dollars and each would pay his own expenses of the trip to be divided equally. I understood him that he wished to bear three or four hundred at home, but he left five without consulting with me. You sent him 1,500 and he said he told you that he wished to leave 1,000 and that you said not to leave over 500, as you were a little short, but you would send more when we needed it. As to his proposition to me, I informed Mollie and Maggie at the time at the cove, which the former well remembers. He informed me that my sister offered to pay his expenses, if he went with me, but this was while we were abroad, and it would be by a queer process of reasoning if he could now propose to add what they offered. Not knowing anything of what it would cost us, I thought his proposition for $800 or $900 was probably reasonable.

I am satisfied that the joint expenses did not much exceed $700, if that. So you will see how much I had. I am delighted to be with Lilly and Mr. Maynard, who are all kindness. You had better be cautious in dealing with him, the Judge, but you could say that the only proposition as to his going with me that you have heard, is just what I have written, and that I communicate it at the time

to my sisters. There is no doubt he did hard and faithful work on the accounts, but the probate court will very likely compensate him well for his work without regard to us.

Yours affectionately, WILLIAM.

242 I may add that the Judge made a trip from Brussels to London and back to find letters; also a trip from Weisbaden to Paris then to London, Liverpool and home, not in joint expenses, which might be charged to me, but ought not to exceed $150, add $100 for steamer tickets to Holland Dec. 8th ($250).

EXHIBIT 33.

Cincinnati, M'ch 10th, 1893. B. Perin, Sp. Ex.

JUNE 1, 1889.

DEAR JOHN: Yours received just before leaving Woodhaven for this place and it grieves me to learn you are so troubled with nervous prostration.

We remained with Mr. Maynard and Lily until we feared we had worn out our welcome. They could not have the visitors they wished and expected, and our stay consequently became embarrassing, so that when we heard of this place we started at once, very much to the relief of both parties. This is an out-of-the-way spot by the sea, where we can rent a furnished cottage, send for the family and live very cheaply doing our own cooking, etc., for three or four months. Both my attorneys advised me to remain East and I think this the best we can do. As madam is about closing her house, we will try and have her come here and keep her out of mischief. I have used very plain language in the endeavor to stop her fearful and wonderful career, which is incomprehensible to me if her head is all right. Pearl says that she and Gertie have compared notes and agree that it is not, but there is so much method in her madness it is difficult to decide what to do. I have no idea where she contemplates going, but think it best to have her as far away from present as possible. Also I have insisted on her patching up a truce with you as desirable in every aspect, but as yet have no definite answer. Mollie is using her funds alone for expenses and proposes to rent a cottage for the season not to exceed $100, partly furnished, and we will get the balance to make us comfortable for a small outlay, and by managing we can live very cheaply as Maggie will understand. Please to send me $300 to put with Mollie's and we will get along. The place is not attractive, the hotels, two small ones, charge transients $2.00 per day and $10 per week. The cottage is cheaper for a party of five or six.

I don't think madam will object to signing the Toledo
243 deed of conveyance, but if she hesitates, have General Hunt speak to Mr. John Little about it as my request.

The General had my instructions about stopping payment of the 75 M some time ago. Baker called to see me Monday last, and promised to enjoin it upon *waching* home, if not given up peaceably,

but in any event I do not see why we should pay McConville for our own work. Send check payable to Mollie.

You must not think Mr. Maynard or Lily were anything but kind to us and did everything to make our stay pleasant, but we were evidently an inconvenience, and were there 37 days, with Pearl to see us *over* a week for a day or two. We felt that we would prefer living in a tent than to bore them longer. It was an imposition.

Craigville, Cape Cod.

EXHIBIT 34.

Cincinnati, March 10, 1893. B. Perin, Sp. Ex.

MAY 26, 1888.

DEAR JOHN: Yours of last week duly received. The present week has been one of much interest here, on account of doings in Cincinnati, concerning which I suppose you have been fully and promptly informed. Please send me a check either on N. Y. or Cincinnati, for $1,386.36, which I owe to Col. R. L. Bright individually, and desire to pay without further delay, as he has been very indulgent. He thinks he can dispose of the Roan Mountain S. & I. Co. stock at good figures, and I have requested him to do so, though he will take no action without consultation. Mollie's last letter stated that father was not so well, but I trust he may be all right by this time. Dr. McClelland found more inflammation than he expected when here a week ago, and sent me some new preparation, which arrived today. Other members of the family well as usual, and all send love. Pearl expects to be on her feet again soon.

Yours sincerely, WILLIAM MEANS.

John Means, Esq., Ashland, Ky.

244 EXHIBIT 35.

Cincinnati, March 10, 1893. B. Perin, Sp. Ex.

NEW HAVEN, CONN., *Oct.* 24, 1888.

MY DEAR JOHN: Yours of 20th just received. I note the payments you have made on my account, and sent note accordingly, *i. e.:*

To Samuel F. Hunt, my ac...	500.00
George Gerke, " "	1,600.00
	$2,100.00

Please find my note this date to order of Thomas W. Means, payable one day after date, for $2,100. Mr. Hunt was instructed to send the Labrot papers to me through Judge Higley, as I need them badly. Will you kindly forward them to Judge Warren Higley, 38 Park Row, N. Y., at once. Of course I do not know what our sister Maggie has written you, but I do know how great her heart is, and how kind she as well as all of you have been. I will depend on

you to protect her against her own generous impulses when I am concerned, as I should be greatly distressed if I thought her making all the sacrifices for me. She is still suffering with her malaria, and has not been out of the house for almost a week. A letter from Mollie received this morning would indicate that she can be expected here in a day or two. Don't remit the 1,000 fcs. additional to C'tesse without further instructions.

Yours affectionately, WILLIAM MEANS.

EXHIBIT 36.

Cincinnati, March 10, 1893. B. Perin, Sp. Ex.

OCT. 22, 1888.

MY DEAR JOHN: I enclose herewith some papers, including the promissory notes you asked for. The others may be useful for reference. The accounts will be ready as soon as Gen'l H. sends some explanatory papers and vouchers which I wish to arrange with these. Maggie has not been well for a day or two, but is better this evening. She will leave soon for a visit home. I have requested madam to send letters to me and not trouble you as before. Judge H. is just leaving here, and will carry these over with him to post.

THE MAJOR.

245

EXHIBIT 37.

Cincinnati, March 10, 1893. B. Perin, Sp. Ex.

JUNE 1, 1888.

MY DEAR JOHN: Yours of June 28th came duly to hand with check enclosed for $1,386.36, which was duly forwarded and acknowledged by a clerk, Col. Bright being temporarily absent. I expect to hear from him in person as soon as he returns.

Had a letter from Mr. Baker today, and expected through him to hear of you being in Cincinnati, but I suppose he did not see you, as he said nothing about it. He leaves right away for St. Louis to help nominate Cleveland and somebody else. I suppose the delegation for California got away comfortably, and I have no doubt they will have a very enjoyable trip.

All pretty well. Pearl is not improving so rapidly as we hoped, and may continue quite a while on the crutches. All send love.

Yours sincerely, WILLIAM MEANS.

John Means, Esq., Ashland, Ky.

EXHIBIT 38.

Cin'ti, M'ch 10th, 1893. B. Perin, Sp. Ex.

JUNE 14TH, 1889.

Received of John Means the sum of three hundred dollars for money loaned.

$300.00. WILLIAM MEANS.

DEAR JOHN: Yours of 8th inst. at hand with check of Ashland National bank on Third National New York for $300, inclosed for which find receipt herewith. I think it in good shape. We are living in a cheap, uncomfortable cottage doing our own cooking and washing, all at cheaper rates than we could live at home, and are expecting the family to pile in on us every day. They will find this a very primitive style, but we will endeavor to make them satisfied. Though madam may wish to annoy you, I am sure
246 she will do nothing serious and I think she will be fully occupied with the domestic situation when she gets down here in the sand. Mr. Hunt was mistaken if he said I was keeping payment of the trust, as instead of that I was only instructing him how to avoid paying until ready. He ought to read his letters more carefully. As to the $75,000 I have done nothing but consult the attorneys, particularly Baker, who visited me before I left Woodhaven, and we fully agreed. Mollie and I are in tolerable health, only I am suffering intolerably with the heat as I have nothing but a suit of winter clothes, but am trying to get some of my old summer goods. To say that I am sorry does not express my trouble about your health and I do most sincerely hope that your mind may soon be relieved so that you can take better care of yourself.

Yours affectionately, WILLIAM.

EXHIBIT 39.

Cin'ti, M'ch 10th, 1893. B. Perin, Sp. Ex.

MARCH 27TH, 1888.

MY DEAR JOHN: I wrote you yesterday at Ashland, but letters received from you this morning indicate that you will leave there for Cincinnati this evening; consequently I write again to say that my attorney C. W. Baker has as yet rec'd no money for fees, and that I wrote you to bring $2,000. He asked me for $1,500 soon after he took the case, but thinking that pretty steep for a beginning, I asked Mendenhall who induced me to employ him—to see him and make present excuses for want of funds, also to try and modify his expectations in that direction. This Mendenhall says he did, and Mr. Baker has been working thus far on his muscle, but as he has been attentive and active in my case he should now have some money, and I suggest that you pay him $800 on account. You can send or bring the balance here. My trouble has not been the throat, but rather the other extremity with impaction and incipient fistula causing acute pain and threatening peritonitis, which I just escaped. The doctor comes again tomorrow to finish his job.

Yours sincerely, WILLIAM MEANS.

(Over.)

Be sure that Evan William nor anybody else has paid Baker anything, before handing Baker the money.

W. M.

247 EXHIBIT 40.

Cin'ti, M'ch 10th, 1893. B. Perin, Sp. Ex.

MARCH 16, 1888.

DEAR JOHN: Please find herewith a circular to shareholders in Kerper addition to Findlay which explains itself to some extent. Any additional information on the subject can be better furnished by the trustees or any one of them, than by me.

With regard to note of Mr. John R. De Camp for $1,200 given to Ashland National bank, of which I have just received notice of protest, I will say that it is a renewal of one given for Roan Mountain Steel & Iron Company stock. He may have written you about it, but if not, and you do not hear from him, as I have written him concerning it, ask him to return the stock for which it was given. The stock is now worth much more than he paid for it, and if he does not do something promptly, and as it cannot be transferred on the book without my signature, may be attached by you in his hands at any time. Am not well and have been confined to my room about two weeks.

Yours truly, WILLIAM MEANS.

EXHIBIT 41.

Cincinnati, March 10th, 1893. B. Perin, Sp. Ex.

MAY 7TH, 1889.

MY DEAR JOHN: I suppose Gen'l H. has communicated with you and mentioned my request to send madam some money. Say $500 which I consider desirable to insure peace, until we get through with other troubles. I informed her that you would not feel like sending money to me and in paying a lawyer employed against you, and was assured that the lawyer business was in the nature of a joke and that no bill would be made. It seems to me best to keep her at Y. S. for the present at least, which she evidently prefers and there will be no further serious annoyance, but I fear trouble under any other conditions, and would not be answerable for the consequences.

Anyhow it would not be best for her to close the house with a view to selling, as such property can be disposed of to much better advantages if occupied. She now promises to work with us for a common object, which is much better than division.

Yours affectionately, WILLIAM.

248 EXHIBIT 42.

Cincinnati, March 10th, 1893. B. Perin, Sp. Ex.

JULY 2ND, 1889.

DEAR JOHN: Yours of 26th ult. inclosing one from Col. Bright just received. I am also in correspondence with Bright on the same

subject and have referred him to you for all papers concerning the Athens Company. I think you will find the note referred to or drafts on me which were paid as a loan to the company, among the papers you have from me. Otherwise I am at a loss as to the whereabouts of the Athens note or papers. In any dealings with Mr. Bright you will find him both honest and straightforward and a gentleman. I note what you say about madam sending the girls to father's, and have to say that I don't think she contemplates anything of the kind. She writes me they propose to join me, and that Patti and Gertie are to start today. She said previously that they had not money to come with and I sent $75.00 of the money you forwarded here. She also expects to come and I think has no intention of going to her father, unless for a visit. I reply in haste to catch the mail just going.

Affectionately, WILLIAM.

EXHIBIT 43.

Cincinnati, March 10th, 1893. B. Perin, Sp. Ex.

MARCH 3RD, 1890.

MY DEAR BROTHER: Mrs. Means here claims that she is indebted for the family here about $1,500, and makes it very unpleasant for me because I don't support my family as she expresses it. Of course it is humiliating to feel in any sense a burden on her, and I would like a reasonable sum to pay her debts of that description and provide necessaries for her and the girls, though I don't believe she has legitimate debts for any such amount. I would be very thankful for $500, and while paying it out would endeavor to find just how much the debt for support of the family is, and I would see to it that none goes to the support of her lawyers for blackmailing purposes. Patti also needs to go to school somewhere, and I
249 would love to have her away from exciting influences. She, Patti, was greatly disgusted with the sensational interview publishing the nature of her illness, and has been very ugly with her mother and sister on that account. She will not allow them to use their vulgar offensive language in her presence, and has excited their antagonism by being friendly with me. Gertie don't resort to her language of her mother, but she enjoys the raving and encourages it. Patti informed me that she was not going on a witness-stand to please her mother. Mr. Hunt and I correspond, but he would not be welcome in the house for a conference as a friend of mine, and I am in a measure helpless. He has however a good idea of the situation and is going to Ashland soon to confer with you as a friend. Since he cannot now act as attorney.

There will be a meeting of the Roan Mountain S. & I. Co. in Cincinnati on the 12th and if you don't wish to attend, would you send yours or father's proxy to vote the stock to Mr. Hunt.

Until I reached here I could not realize the persecution you have been undergoing, but now you have my heartfelt sympathy as well

as my gratitude. Give my love to every member of your family, my sisters and cousins and the Culbertsons, and believe me,

Your affectionate brother, WILLIAM MEANS.

You can answer through Judge Hunt if you prefer.

W.

EXHIBIT 45.

Cincinnati, March 10th, 1893. B. Perin, Sp. Ex.

YELLOW SPRINGS, *March 6th*, 1888.

DEAR JOHN: Your favor written just before your departure for N. Y. came duly to hand, also the remittance at the hands of Capt. Holloway received on the 28th ult., for which receipt is herewith enclosed. I have been here several days seeking needed rest and quiet, which could not be obtained in Cincinnati, and feel much better than when I came, though not yet strong. Before leaving the city I added a bright young attorney—Mr. C. W. Baker, to assist in my case, as I could not perceive any advantage gained through Mr. Ramsey, who if he took any interest did not
250 make it apparent. Mr. Baker went to work at once, and some of my friends think if he had been employed in the beginning, there would have been no indictments. He says so himself. Baker was J. W. Wilshire's attorney and brought him through, though it was considered a bad case.

Yours truly, WILLIAM MEANS.

EXHIBIT 46.

Cincinnati, March 10th, 1893. B. Perrin, Sp. Ex.

MAY 1ST, 1888.

MY DEAR JOHN: Please find accounts and checks from G. R. Dudley, who collects rents and looks after Covington property. I will straighten out any missing links after getting on my feet again, and Mr. Dudley will hereafter send these accounts to you, unless otherwise instructed. A. Montgomery & Co. have kindly looked after the taxes about twenty years, and I have no doubt will continue so to do. My condition is about the same as when you and the girls were here, and I hope you are all as well as usual at least at Ashland. All send love and I remain

Sincerely yours, WILLIAM.

John Means, Esq., Ashland, Ky.

COVINGTON, *March 27th*, 1888.

Wm. Means to J. W. Jones, Dr., to repair shutters on No. 300, 301 and 304, corner 3rd and Main streets..... .. $4.90

Across the face in red ink: For Margaret A. Means.

Rec'd pay,

JOHN W. JONES.

Wm. Means in ac. G. R. Dudley.

1888.		Maggie.
Mar. 27.	Repair window shutters	$4.90
Apr. —.	Com. on collection	7.40
18.	Check pr. Men'l	61.70
		$74.00

		Cr.	Mary.
Apr. 3.	By rent	300 Main street	$20.00
	"	202 " "	15.00
	"	169 3rd "	12.00
16.	"	621 Berkwell	12.00
17.	"	304 Main street	15.00
			$74.00

G. R. D.

(Over.)

251 (On back of account.)

$74.00. Wm. Means.

G. R. Dudley:

Inclosed with letter from Wm. Means of 1st of May, 1888.

Rents.		Com.		Net.
$12.00	Mary A. Adams,	$1.20		$10.80
62.00	M. A. Means,	$6.20—$55.80		
	"	ac. shutters, 4.90	50.90	
		Check	$61.70	

Exhibit 47.

Cincinnati, March 10th, 1893. B. Perin, Sp. Ex.

May 14th, 1888.

Dear John: Yours of 12th received with Dudley's check for endorsement, which is herewith returned complete. I handed to Mr. Hunt my proxy for voting Metropolitan Bank stock more than two weeks ago, as at that time there were several candidates for the agency seeking these proxies, and having been fully posted by him as to the wishes of McConville I thought it best to send promptly. Have a pleasant letter from Mr. Baker today, the first for several weeks. He informs me that my case has gone over until November; though I can scarcely think he means to send this as news. I should not be surprised if he is made delegate at large to Dem. nat. convention. Mr. Hunt says he is not a candidate, but I am informed he will be president of State convention. It will not be

to our disadvantage to see them both prominent in politics just now. Love to all from

Yours sincerely, WILLIAM.

John Means, Esq., Ashland, Ky.

EXHIBIT 48.

Cincinnati, March 10, 1893. B. Perin, Sp. Ex.

YELLOW SPRINGS, *June* 23, 1888.

DEAR JOHN: Yours of the 16th with the checks for Hamilton county taxes came duly to hand. We have probably no
252 news you are not familiar with. I cannot understand why the D. A. feels that he cannot act without instructions from headquarters, when we have been assured all along that everything is all right there.

Have letter from Mollie saying Maggie would come to us today by the overland route, and we hope for — on the evening train. Have a nice shower this forenoon, but want more. All as usual and I remain

Sincerely yours, WILLIAM.

John Means, Esq., Ashland Ky. (Over.)

There is no doubt that no action has been contemplated by Government officials either in Cin. or Washington in my behalf, and begin to feel as though we are just where we started. It would be a great accommodation to them if I should die, and that is what Burnet most devoutly hopes for. He has aspirations, and don't want to interfere with the coming campaign, yet is desirous of conciliating my friends, particularly Hunt and McConville, who lat-erly have done all the work on my behalf. Baker has done nothing since he received his fee.

WM. M.

EXHIBIT 49.

Cincinnati, March 10, 1893. B. Perin, Sp. Ex.

AUGUST 5, 1888.

MY DEAR JOHN: Yours of 1st inst. at hand. The address I gave you should be

Countesse d'Adhemar,
10 Rue Lesneur,
Ave. du Bois de Boulogne,
Paris,

for whom the 1,000 fcs. are to be remitted by cable. To save cabling, please send draft for 1,000 fcs. on the 20th inst.

Maggie is well and goes into the water every day but Sunday.

I have opportunity to send this to N. Y. right away, and therefore close in haste.

Affectionately, WILLIAM.

253 EXHIBIT 50.

Cincinnati, March 10, 1893. B. Perin, Sp. Ex.

AUGUST 9, 1888.

MY DEAR JOHN: Yours of 6th just at hand. I am as much mystified about the overissue of stock as any others can be, and I have already told you how the stock was cancelled and reissued through one of the clerks. Edwards, cashier, had charge of the stock ledger, and it was his duty to keep things straight in that connection. Nor can I understand what Mr. Chas. C. Jacobs' stock has to this matter, unless he holds and has paid for the identical certificate overissued, and nobody else had the benefit. If not, then he has no more right to claim release under it, than any other stockholder.

It is clear that whoever received the proceeds of the overissue should reimburse the bank, and no other can have any interest except with the shareholders in common. The stock issued to me was all paid for, so far as I know, and if so, I am a loser by the operation.

This business was conducted by the cashier under the general guidance of Mr. De Camp, V. P., and the latter can, no doubt, unravel the entanglement better than any other. I have told Mr. Hunt repeatedly that De Camp is familiar with all these details, and should be consulted, but there is nothing which indicates to me that Mr. C. C. Jacobs has an special interest in the overissue, unless he was individually injured or benefited thereby. But a careful examination ought to show. As to the trusteeship, I must again refer to Mr. De Camp as capable of furnishing more information than all others combined, and I venture to say that our protection suggests his cultivation. In all this I must prefer your judgment to that of Mr. Hunt for various reasons. I write this in haste to get it into the mail.

Affectionately, WILLIAM.

EXHIBIT 51.

Cincinnati, March 10, 1893. B. Perin, Sp. Ex.

AUGUST 15, 1888.

MY DEAR JOHN: Yours of 8th duly received and I have been waiting in the hope of seeing Col. Bright before replying.
254 But his brother, an attorney in N. Y., who happened along here and stopped an hour, says the Colonel cannot come until next Sunday. I will then have a conference with him respecting the sale of Roan Mountain stock, and advise you. He has been engaged in raising a large amount for the Nashville & Telico R. R, which he has built himself and been very fully occupied. I understand that he expected to finish his negotiations in that behalf during the present week. Please ask your correspondent for statements of remittances in form, as the best vouchers for money sent abroad. It is very hot here, but we are well as usual. Maggie is just going

down to the beach in the hope of finding it cooler, though it is doubtful. Love to all from

WILLIAM.

EXHIBIT 52.

Cincinnati, March 10, 1893. B. Perin, Sp. Ex.

SEPTEMBER 17, 1888.

MY DEAR JOHN: Yours of 12th received inclosing one from C'tesse d'Adhimar. Please send her the 2,000 fcs. she asks for to the following address as before: "The C'tesse d'Adhimar," 10 Rue Lesner, Ave. du Bois de Boulogne, Paris. I am working on the trust accounts, and will have them soon. Col. B. is here again and I had a short interview with him last night. He thinks Mr. Hunt ought to have given him some satisfaction at least as to whether he needed assistance or not. A mere hint that he did not would have been less offensive than the attitude assumed. It is probable that Mr. Hunt's professional jealousy was excited because he did not hear from us before Col. B. though the latter assured him you and I had just been consulted and that the proposed co operation was of a friendly rather than professional character. Take good care of yourself as Maggie and I are troubled about your health. You are not very strong and I can't convey an idea of the worry and grief I experience on account of your burdens,

Affectionately, WILLIAM.

255

EXHIBIT 53.

Cincinnati, March 10, 1893. B. Perin, Sp. Ex.

OCTOBER 4, —.

MY DEAR JOHN: Your note just received. Will in a day or two send amount of cash to hand one of the heirs then can hand over the cash balance as soon as possible in accordance with last will and testament. I will see Mr. Hunt about this so that you may have no fear as to loss on this account, though will not tell him all. There are no bondsman. If you wish to put in securities in place of cash it can be done for an amount which I can send you by Mr. H. Don't feel any uneasiness about it. Mr. L. Labrot of Frankfort will answer for one of the trustees or both if he will accept. Will send copy of will by H.

EXHIBIT 54.

Cincinnati, March 10, 1893. B. Perin, Sp. Ex.

OCTOBER 16, 1888.

MY DEAR JOHN: Yours received with tax receipts, deeds, etc., concerning W. Va. lands belonging to Labrot estate which will be promptly attended to.

I will write the heirs to select a successor or successors to the trusteeship, which you will better understand by reading the copy

of will sent you by Mr. Hunt, and marriage contracts that I will send you in a day or two. Pending this settlement please forward to Mad. d'Adhimar the c'tesse 1,000 fcs. when you receive this. Mr. Hunt will send all papers so that I can get accounts and vouchers in good shape for final settlement. I am expecting to hear from him every day. We are doing pretty well here, but very anxious about matters out West.

Affectionately, THE COLONEL.

EXHIBIT 55.

Cincinnati, March 10th, 1893. B. Perin, Sp. Ex.

NEW HAVEN, *Oct. 25th*, 1888.

MY DEAR JOHN: The amount seems to be between 73 and 74 M, which I have arrived at after looking over eleven years' work
256 by different book-keepers, of which corrections had to be made. This will answer your present purposes, while I look it over again. Deducting the mortgage 10 M and the R. R. bonds 10 M leaves 53 M ($53,000) to be provided for. I will get the account in good shape as soon as possible, so that it may be easily settled. Mollie came this p. m. and has entirely recovered from her rheumatism, which she claims was left somewhere on the road. I have no doubt she is much benefited by the trip. Maggie has been quite ill with malaria but is improving now. She will not attempt to start home until she feels that the trouble has been fully mastered.

Yours affectionately, WILLIAM MEANS.

EXHIBIT 56.

Cincinnati, March 10th, 1893. B. Perin, Sp. Ex.

NEW HAVEN, *Nov. 22nd*, 1888.

MY DEAR JOHN: Your letters received. I have made a guess at fees which I have no doubt will be allowed and send you a note of 45 M which seems to meet the case within about $300.00.

The Judge carried off the accounts on Tuesday to be copied, so that they may not appear in my handwriting. I look for his return with them Saturday evening and don't see why he should not carry them West at the beginning of the week. Will have him advise you by telegraph. The party who will probably represent the Labrots in settlement will most probably be Mr. Leopold Labrot of Frankfort, Ky., who is a sensible and fair man. The Judge says the joint note of yourself and myself will be entirely satisfactory as a temporary arrangement, as the heirs will prefer to have the estate bearing revenue, which he will easily arrange with Mr. Labrot or the Count, and he will bring my notes to Cincinnati. His fees and expenses of settlement must be in cash. The Huntingtons wish to pay their note and cancel mortgage. I have no papers whatever referring to Toledo. The Marrietta & Cin. R. R. scrip and bonds are among my papers at Y. Springs. I didn't see you use any gold pen

but mine and we do not find any other. The Judge will write Mr. Labrot as attorney of the estate. Maggie doing well. In haste,

Yours affectionately, WILLIAM MEANS.

257 EXHIBIT 57.

Cincinnati, March 10th, 1893. B. Perin, Sp. Ex.

JULY 9TH, 1888.

DEAR JOHN: Yours of 4th rec'd. Martha had informed me of McClellan's bill, which we consider outrageous, but I suppose we can't help ourselves. I am improving here with the air and exercise, and my great trouble is mental. Am not only miseral le myself, but make everybody else so, near and dear to me.

I hear no good news as to my case, and fear the influence of politics. My seclusion must be maintained lest my improved condition be reported as it might be. Aunt and Maggie well and all send love.

Yours affectionately, WILLIAM.

Write aunt's name on envelopes.

EXHIBIT 59.

Being the balance of Exhibit 20.

Col. W. and others say that Mr. Sherman's influence with the administration is all-powerful at this time, and that Mr. Smith and Senator Sherman can guarantee that any action in my behalf will not be charged by Republicans as favoritism to Democrats. Mr. Smith agrees to go, and wishes to have Hunt and Burnet at least to go with him. Smith, Hunt and Baker were to have a conference today and decide the matter, and it is possible that Baker may go with Smith and Hunt, or that all will go, including Burnet, but of course I shall have to bear the expenses of the trip, which will be at the end of the week. I have requested Mr. Hunt to pay interest on loans, and have paid off many bills, and would like to have you remit him $1,000 before he starts.

Yours of 14th just received inclosing one from Dr. Lew Worthington. I also have one from Mr. Baker saying that Judge Sage goes week after next to Nashville to see Judge Jackson with reference to the setting and the trial of my case and De Camp's. This shows the importance of the proposed trip to Washington as early as possible. I hope Maggie got home safely and pleasantly after giving us such a nice visit. All send love and I remain

Sincerely yours, WILLIAM MEANS.

258 Re-examination of JOHN MEANS:

R. D. Q. 1791. Where did your father live at that time?

A. Hanging Rock.

R. D. Q. 1792. Where did you live at that time?

A. Ashland.

R. D. Q. 1793. Who drew up the will?

A. Mr. Julius L. Anderson, attorney here present.

R. D. Q. 1794. Who showed you the will before it was signed, and where?

A. My father and Mr. Anderson came to Ashland and showed it to me there—read it to me, or I read it, I don't know which. It was read.

R. D. Q. 1795. Who was present at that time?

A. My father and Anderson. I don't recollect certainly any one else.

R. D. Q. 1796. Where was it, Mr. Means?

A. I cannot answer as to where it was in Ashland; they took dinner at my house, but whether the will was read—it might have been read at the Ashland Coal and Iron office or at the Ashland National bank or at my house. I have no recollection of which place.

R. D. Q. 1797. Did they come more than once or only on one occasion?

A. Only once that I recollect.

R. D. Q. 1798. Now, was any suggestion made at that time by anybody as to any change in the will that had been drawn by Mr. Anderson?

A. I think not.

R. D. Q. 1799. Did Mr. Anderson come there first with the will before Mr. Anderson and Mr. Thomas W. Means came there?

A. They came together.

R. D. Q. 1800. Did Mr. Anderson come at any other time prior to that with the will?

A. He never did.

R. D. Q. 1801. Was there not a change suggested from the original draft as made by Mr. Anderson and was not a change made?

A. To the best of my recollection the will was signed as written and read then. If any change was made, it might have been a verbal change.

259 R. D. Q. 1802. I ask you to refresh your recollection, Mr. Means. This is something that occurred some time ago. Isn't it true that Mr. Anderson came there first with the draft of the will, that you suggested some changes in it, that Mr. Anderson then went back and came again and the second time he came he came with your father and came with a draft of the will which had incorporated in it the changes that you had suggested, and that that draft of the will was then executed?

A. I don't think I ever saw Mr. Anderson with any draft of that will before, or talked with him of any. To the best of my belief that will was executed as read that day. That is my belief and recollection now.

R. D. Q. 1803. Where was it executed, Mr. Means?

A. I did not see it signed or witnessed.

R. D. Q. 1804. When was the first time you saw it after it was signed and witnessed?

A. I can't answer that. He may have brought it up that day or

the next week, or I think probably the first time he came to Ashland after it was signed.

All this line of evidence is objected to. There is no contest of the will. It is irrelevant to this case.

R. D. Q. 1805. Then do I understand you that when it was brought there and read, it had not been signed; it was signed afterwards?

A. That is my recollection.

Mr. Maxwell here produced memorandum of payments to Ramsey, Maxwell & Ramsey in Labrot matter:

August 23rd, 1890	$70,000.00
August 25th, 1891	2,014.78

Heretofore shown by the evidence to have been paid.

Mr. GLIDDEN: We offer in evidence the receipt of William Means to E. C. Means, dated Ashland, Ky., 23rd Oct., 1890, with the statement annexed.

Said paper is marked "Exhibit 30, Cin'ti, March 10, '93. B. Perin, sp. ex."

Copy of the same is as follows:

260 EXHIBIT 30.

Cincinnati, March 10, '93. B. Perin, Sp. Ex.

ASHLAND, KY., *23rd Oct.*, 1890.

Received of E. C. Means (from John Means) the following:

Certificates number- 100, 99, 98, 97, 96, and 101 for one share each (6 in all) in the Roan Mountain Steel and Iron Company. Certificates No. 16 for ten (10) shares and No. 65 for twenty (20) shares (thirty in all) in the Mount Auburn Cable Railway Company. Certificates No. 31 for six two-thirds ($6\frac{2}{3}$) shares, No. 30 for ten (10) shares, No. 29 for ten (10) shares, No. 28 for ten (10) shares, No. 27 for ten (10) shares, No. 26 for ten (10) shares, No. 25 for ten (10) shares, No. 24 for ten (10) shares, No. 23 for ten (10) shares, No. 22 for ten (10) shares, No. 21 for ten (10) shares, No. 20 for ten (10) shares, No. 19 for fifty (50) shares (in all $166\frac{2}{3}$) in the Athens Mining and Manufacturing Company.

Two receipts for payments on subscription to capital stock of the Covington Transfer Railway Company, one dated Nov. 9th, 1887, for $500.00, and one Aug. 23rd, 1887, for $500.00.

The two receipts for payments on subscription to capital stock of the Manufacturers' Land and Improvement Company of Covington, Ky., one dated 16th July, 1887, for $2,000.00, and one 16th Jan., 1888, for $250.00.

The above all being in the name of William Means.

WILLIAM MEANS.

Metropolitan National Bank of Cincinnati.

Feb. 15th, 188–:

Demand loan, Mar. 14, '87		$4,350.00
Accrued int.		89.15
Demand loan, Mar. 21, '87		8,750.
Accrued int.		179.35
Demand loan, Apr. 3d, '87		6,000.
Accrued int.		123.
Demand loan, " 5th, '87		2,000.
Accrued int.		41.00
Demand loan, Oct. 26, '87		5,845.99
Accrued int.		109.10
261 Time loan, due Mar. 4, '88		5,977.50
" " H. Capelle, Mar. 11, '88		5,000.
Time loan, H. Capelle, Apr. 7, '88		5,000.
" " " " " 9, '88		5,000.
" " " " " 11, '88		7,000.
" " " " Feb. 26, '88		10,660.
" " Tellico Mfg. Co., Mar. 17, '88		1,015.50
" " Athens M. & M. Co., May 7, '88		856.10
" " William Means, " 17, '88		26,691.81
" " " " 16, '88		25,000.
" " " Feb. 7, '88		5,000.
Demand loan, " Oct. 14, '87		2,000.
Accrued int.		41.34
		$126,729.84
Int. on note Feb. 7, 8 days		6.67
		$126,736.51

Credit by rebate interest on notes not matured:

11 days on	$10,660	$19.53	
31 " "	1,015.50	5.23	
82 " "	856.10	11.60	
92 " "	26,691.81	409.25	
91 " "	25,000	379.16	
			824.77
			$125,911.74

(In pencil:) I delivered these notes to William Means 23rd October, 1890.

E. C. MEANS.

R. X Q. 1807. I hold in my hand a letter of August 1st, 1888, signed "William" to "John"—Means, I presume—to yourself. It refers to agreeing with you that certificate 171 Metropolitan Bank stock should be paid and surrendered to Mr. McConville. Specify what certificate and debt it was.

A. It is the debt to the Circleville bank secured by the certificate

of stock one hundred and seventy-one in the Metropolitan National bank referred to in William Means' letter dated 1st of August, 1888, for which the note of August 20th, 1888, in favor of Thomas W. Means for $5,000.67 was given, being for the payment of the note and interest and debt due at the time of payment.

R. X Q. 1811. In answer to question 1712, your answer is: "That is not true as the question is put." Please look at the question and state what is true as to the facts.

262 A. In my answer I meant "not true as the question is put," that I understood the question to imply that all the advancements between 1880 and 1884 were made at the same time in 1884, while in fact there was a number of payments or gifts at different dates between the time, in 1880, of the execution of the will, and the evening up of the accounts in 1884.

R. X Q. 1812. State what is the fact as to whether from the date of the execution of the will to the time the accounts were all made equal, you were urging, or not, your father to make the accounts equal?

A. I did urge him at various times to make the account equal, or, rather, make the amounts given equal.

R. X Q. 1813. Had you understood that on the final settlement of your father's estate, you or any of the children against whom accounts stood for gifts made, would be charged interest upon the advancement, would you have accepted any or all of the advancements made to you?

Q. I never would have taken all he gave me as a loan if it had been made to me as a loan and interest to be paid on the same.

R. X Q. 1814. You made some statement day before yesterday as to the interest of William Means in Pine Grove Furnace Company, I believe, or property, and also yourself, each having at the outset, I believe, fifty thousand dollars, a portion of which was paid by profits on your respective shares and that William Means had twenty thousand dollars more—seventy thousand dollars in all. I understood the effect of your statement to be that he also paid a part of the twenty thousand dollars—a proportionate part of the twenty thousand dollars, by profits on the same; is that correct? If not, state what the fact is. (Witness examines book.)

Recess until 2 o'clock.

Afternoon session.

A. On Thomas W. Means' books, Journal A, page 287, under date of July 29th, 1864, is this charge: William Means Dr. for amount out of $4,500 check on 2d National B'k of Ironton, paid on William Means' stock in Means, Kyle & Company, April

16, 1864....	14,982.25
½ c'k on 2d Nat. B'k of Ironton, May 23, 1864....	1,600.
½ c'k on 2d Nat. B'k of Ironton, June 16th, 1864.....	7,500.

Making $24,082.25 paid on account of the Means, Kyle & Company stock.

263 On Journal A, page 295, under date of January 5th, 1865, William Means is debited:

Wm. Means fr. call of 20 per cent. on stock in Means, Kyle & Co., July 1, '65..... 6,250
Wm. Means fr. call of bal. due on stock in Means, Kyle & Co., Mar. 20, '66..... 25,625

The foregoing, amounting to fifty-six thousand eight hundred and seventy-five dollars, was the total amount paid by Thomas W. Means for William. The remainder of the seventy thousand dollars was paid by profits on the fifty thousand dollars, 13,125, the same as the profits on mine heretofore testified to.

Journal A, page 352, under date of October 9th, 1869, William Means is credited for seventy shares of stock at 42 % premium, 99,400. The Means, Kyle & Company stock account is charged for this amount. This $99,400 is made up of the seventy thousand dollars of the principal and the twenty-nine thousand four hundred dollars, the premium at 42 %. The charge on page 295, stock in Pine Grove furnace was the stock in the furnace owned by Means, Kyle & Company. It refers to the same thing as the stock in Means, Kyle & Company.

Counsel for complainants move to strike out the portion of the answer with regard to the sale of William Means' stock as being entirely foreign to the question and to this controversy.

R. X Q. 1816. At the head of each of the accounts with each child, in which the advancements are charged, is a statement in substance that no interest is to be charged on this account on final settlement or at any other time and signed by Thomas W. Means, your father. I will ask you if at any other time there was any other statement either verbal or written, to you, or to the others, as far as you know, in reference to the advancements. If so, what?

A. He never made any statement to me, either verbal or written, in regard to mine, or, so far as I know, to the others, but always expressing the intention to charge no interest.

R. X Q. 1819. As to the item charged in the account against you that make up the aggregate of one hundred and eighty thousand dollars of advancements, how many, if any of them, were given to you at your instance and request, and what item or items, and when?

A. I don't think—in fact, I feel very sure—that I never asked him to give me money or anything of value to any amount,
264 excepting once. That is charged in this account, and that is on Journal A, page 12, under date of March 15, 1855. John Means is debited for this amount, "On account check No. 3, $600." That money was given soon after I was married, and I asked him that to pay for my furniture, and I think that is the only instance in which I ever asked him to give me money or property, making the item in this account.

R. X Q. 1820. Your evidence yesterday, in answer to Mr. Glidden's question, refers to interest upon advancements as gift. Do I

understand that you considered, or that your father considered, that the increase and interest upon sums and property that he had given that was charged against you as advancements, were gifts from him, or otherwise; state how the fact was?

Question objected to.

A. I considered and he considered the property as a gift. The profits or interest from it, after the property was mine, belonged to me, and was not a gift from him.

Objected to.

R. X Q. 1821. He gave you money, sometimes. Do you mean your answer to refer to property and money?

A. Everything given to me; money and property.

R. X Q. 1822. Mr. Means, in answer to question 1717 you say, "I never made any such calculation; was always told that no interest was to be reckoned." I ask you now who told you that?

A. My father, Thomas Means.

Testimony of John Russell.

Q. 18. I will ask you, Mr. Russell, before there was any mental failure, if there was any, as you have stated at large, he was not an exceedingly bright business man, a man of fine judgment?

A. Yes, sir. He was a man of good judgment on business propositions of every kind. That is borne out by the fact that he was a very successful man. That is the evidence for that. This I know, that he advised me time and again in the early day of our acquaintance to do things that my own judgment did not approve of, but I would do it upon his, and it always came out right. That is, at an early day in our acquaintance.

265 *Testimony of Pearl Means.*

Q. 49. I will ask you whether your aunt Margaret was there?

A. She was there.

Q. 50. What, if anything, did your aunt Margaret say to you with reference to the payment by her of any portion of the $125,000?

A. She said she had paid $50,000 of the $125,000.

Objected to as irrelevant, incompetent and hearsay.

Q. 51. Well, what else did she say about it?

A. And she said that the estate had paid $50,000 and John had paid $25,000.

Q. 52. What else did she say about it, if anything?

A. I don't understand.

Q. 53. Anything said about the repayment of it by the family?

A. We told her we did not know how we could ever repay her, and she said our grandfather's estate was still there for us, and that we would have that, that was untouched. She again and again

spoke of having paid that money, and we told her we never could repay her to thank her.

Q. 54. That your interest in your grandfather's estate was untouched?

A. Yes, sir.

Statement objected to as incompetent, irrelevant and hearsay.

Q. 55. Did you have any other conversation with any member of your father's family, his brother or sisters, at the time you went upon the stage to support yourself?

A. I did.

Q. 56. When was that, Miss Pearl?

A. That was the same year; the same autumn.

Q. 57. In that conversation, what, if anything, was said by them to you with reference to the interest in your grandfather's estate?

Objected to as irrelevant, incompetent and hearsay, and for the further reason that the statements if admissible are made by a person not competent to testify.

A. They assured me it was unnecessary for me to do it, that there was ample there—ample—ample for all and that I would be disgracing the family.

Q. 58. Now, who assured you of that, Miss Pearl?

A. My aunt Margaret.

266 Q. 59. Your aunt Margaret Means?

A. Yes, sir.

Objected to.

Q. 60. Did you have any conversation with any of the rest of them in regard to it?

A. My uncle John sent word by my aunt Margaret to me not to do it, that there was plenty there, that we would all be provided for, and when I said "How is it my sisters are not provided for? It seems strange. I should just like to see how it is," he said "Your sisters are provided for and will be provided for and you will be provided for," and I said "Let me see it, and I will do it when it is shown," and they never said anything more about it.

Objection renewed to this statement.

Q. 61. Miss Pearl, were any means actually furnished for your support?

A. My aunt Margaret gave me some money at that time. She gave me a little money. She gave me at one time twenty dollars and at one time thirty dollars and the most she gave me at any one time may have been thirty or forty dollars, and that I only took from her to me and not in the way of support. I was named for her and I was very fond of her and she gave me little things but she did not count that but simply as a little gift.

Q. 62. The question is, whether any provision was actually made for support of yourself and your sisters.

A. Oh, no; never has been.

Q. 63. And you went on the stage until your health broke?
A. I did.
Q. 64. Have you any means of subsistence?
A. No.

Objected to as irrelevant.

Q. 65. Has any been tendered to you or proffered to you?
A. No, sir.

Objected to for the same reason.

Cross-examination of PEARL MEANS:

X Q. 78. You have spoken about having conversation with Maggie Means as to providing for you. Was that at Yellow Springs or at New Haven or near New Haven?
A. It was in New York city.
X Q. 79. How long before you went on the stage was that?
A. I was studying for the stage then.
267 X Q. 80. She was trying to persuade you not to go on the stage, was she not?
A. Yes, sir.
X Q. 81. Did she, in that conversation and at that time, say to you in substance that if you would not go on the stage she would make provision for you and give you an allowance?
A. I don't think she said anything about an allowance. She said I might come to Ashland.
X Q. 82. Didn't she say she would make provision and allowance for you?
A. She said the estate would.
X Q. 83. What I want to know is, didn't she say that she herself would do so if you would not go on the stage?
A. I don't think she did. I don't remember anything about that conversation.
X Q. 84. Can't tell whether she did or not?
A. I know she said at one time that she thought all the children would be provided for and they were provided for. She told me at the time, that they were getting three thousand dollars a year which I knew was not true, because I had received letters from home that they were destitute.
X Q. 85. Didn't she herself offer, if you would not go on the stage, to see that you were provided for, or provide for you—substantially?
A. Not that she would.
X Q. 86. That she, individually, would do so?
A. No, sir.
X Q. 87. Did she never make any offer of that kind?
A. Not that I remember, except money was given me then, fifteen dollars and twenty dollars and thirty.

Testimony of Gertrude Means.

Q. 48. Did you have any conversation with your aunts or your uncle John with reference to the interest in your grandfather's estate?

Objected to.

A. Before we had gotten it, you mean?

Q. 49. Yes; before the deed of trust from your father, what conversations did you have with them and with him, and when?

Objected to upon the ground that Miss Margaret Means is not a party to this suit, nor any of the parties named; and as hearsay.

268 A. After the failure of the bank, when Miss Margaret Means came to our house, upon the first visit, she told us several times that she had paid fifty thousand dollars of her own in partial payment of the one hundred and twenty-five thousand dollars which went to the bank, and we told her that we never would be able to repay it, and she explained that we would have ample fortune from our grandfather.

Answer objected to for the same reason.

Q. 50. Did she ever explain as to whether or not that interest in the grandfather's estate was impaired or not?

A. I understood her to say it was not.

Objected to for the same reasons.

Q. 51. Did you have any conversation with any of your uncles?

A. Yes, with John Means.

Q. 52. When was that?

A. When my sister went on the stage and when she was studying for the stage, he urged me not to do anything, but to remain at home, that we would be provided for and that there was ample to do it with, belonging to ourselves.

Q. 53. Coming from whence?

A. Coming from my grandfather's estate.

Q. 54. Did he say anything to you then as to whether that was impaired or not?

A. I understood it was not impaired.

Answer objected to.

A. I asked him on the subject myself. I enquired whether I should not do something, and Patti, my youngest sister, who was under age at that time, asked him, and he assured us, with great emphasis, that we should do nothing, and that we would be provided for, and under those circumstances we took his word.

Q. 55. Has provision been made?

Question and answer objected to.

A. Do you mean directly to me?

Q. 56. Yes, any provision for you?

A. No, sir. I have received a small sum from John Means. I think it was a hundred dollars. It was acknowledged.

Q. 57. He sent you a hundred dollars?

A. That was all.

Q. 58. No provision beyond that?

269 A. None at all.

Q. 59. Have you any means of livelihood now except what is involved in this trust and property?

Objected to as incompetent and irrelevant.

A. No, sir. I would like to state that I am not sure whether Mr. John Means sent me more than a hundred dollars or not, but he may have sent me fifty or twenty five, but outside of the twenty-five, I don't think he did.

Q. 60. Your best recollection is that the hundred dollars is all he ever sent.

A. That is my recollection.

Capt. W. W. CULBERTSON, called for complainants, being by me first duly sworn, testified as follows:

Direct examination by Mr. GLIDDEN:

Q. 1. Please state your age, present place of residence and how long you have resided there?

A. I am 57, past. Live in Ashland, Ky. I think I moved there in 1870.

Q. 36. You were engaged, Captain, in Buena Vista and Princess furnace?

A. Yes, sir.

Q. 37. That resulted in a financial loss?

A. Loss.

Q. 38. I will ask you whether Mr. Means ever executed to you a paper or gave you a paper signed by himself relating to the matter of your responsibility or liability at any time to account for that loss?

A. He did.

Q. 39. Where is that paper, Captain?

A. That is in Ashland at my house.

Q. 40. Will you produce it to the examiner here?

A. I could do it, if required to do so.

Q. 41. We would like to have you do so to the end that he may take a copy of it?

A. I have no objection, only I do not want to lose the paper.

(Copy of the paper is attached at end of this deposition.)

Cross-examination of W. W. CULBERTSON:

X Q. 61. Mr. Glidden has asked you about the loss in that business. Can you state approximately, upon the settlement of the affairs of the firm, what the loss was?

270 A. I don't know exactly, but I think about a hundred thousand dollars.

X Q. 62. Was it not as much as a hundred thousand dollars after a public sale of the accounts and assets of the partnership?

A. Well, possibly it was. I am not sure upon that point. I don't recollect the exact amount.

X Q. 63. Can you give us the date of the paper in the nature of a release that you have spoken of to Mr. Glidden?

A. I can give you the month. I think it is in July, 1880. I am not positive about this, but it is my remembrance that it was in July, 1880.

X Q. 64. And that paper, you say, was a release given you by Thomas W. Means on the indebtedness you were under to him as partner in the losses of that concern?

A. Yes, sir. Voluntarily. I did not ask him for it.

X Q. 65. Do you know the amount covered by that release to you?

A. I don't think there is any dollars named.

X Q. 71. Who was the active, managing agent and person in the operation and control of the business of the Buena Vista and Princess furnace.

A. Well, I was, I suppose. I was the chief. I lived at Ashland and controlled the furnace.

Whereas in the settlement of the partnership heretofore existing between Thomas W. Means, W. W. Culbertson and K. R. Culbertson, deceased, by a suit in the Boyd criminal court, there appeared to be a balance in favor of Thomas W. Means against the said partnership, now in consideration of one ($1.00) dollar to me in hand paid by W. W. Culbertson, I, Thos. W. Means, do hereby release and acquit W. W. Culbertson of all liability to me for said balance, and this shall be his receipt in full therefor. Witness my hand this 10th day of July, 1880.

THOMAS W. MEANS.

Witness:
JAMES BULL.

EVAN F. WILLIAMS, being by me first duly sworn, deposes as follows:

Defendants object to the competency of the witness because being one of the complainants and having introduced other evidence and witnesses in this case-in-chief he is not competent to testify
271 in chief. They also object because having introduced one of the defendants' witness- is incompetent.

Direct examination by Mr. GLIDDEN:

Q. 1. Mr. Williams, what is your age, residence, your occupation and your relation upon the record to this case?

A. 45 years old; Ironton, Ohio; lawyer. One of the trustees.

Q. 2. How long have you resided in Ironton or vicinity?

A. Since 1856, about that time.

Q. 3. Were you acquainted with Thomas W. Means in his lifetime, and if so when did you become acquainted with him?

A. Yes, sir; I knew Thomas W. Means very well. Knew him about '64 and I became very intimately acquainted with him about 1872.

Q. 6. How near did you reside to the Means farm when he resided at Ironton?

A. Well, I suppose about a mile and a half, probably. I lived just below beside of Ironton on this side of the corporate limit and he lived above Hanging Rock, when I became very intimate with him.

Q. 45. Did Thomas W. Means ever state to you anything with regard to his idea or intention in the matter of the division of the property amongst his children?

Objected to on the ground that it is simply hearsay not known to have been made in the presence of any party to this suit and as incompetent and irrelevant.

A. Yes. I remember several times in talking about law matters, and his idea about estate, he stated that he did not propose to execute all his estate during his lifetime for the reason that he wanted to keep back a good portion in case any of his children would become unfortunate. And that he repeated more than once.

Answer objected to as incompetent, irrelevant and hearsay.

The WITNESS: The language I am stating in substance.

Mr. GLIDDEN: Did he ever say anything to you about his idea of that which he did divide or would leave for division to his children, about the matter of equality or inequality of division amongst his children?

Objected to for the same reason.

A. I don't recall now except the predominant idea with
272 him was, to keep back a sufficient portion of his estate to provide for any child who had bad luck. That was his intention to do it.

Objected to on the same ground.

Q. 45. Did he state that to you more than once?

A. Yes, more than once.

Q. 46. Few or many times?

A. A great many times—repeatedly.

Q. 47. During what time?

A. It was difficult for me to fix the precise date of any of these conversations, but I should say after 1878.

Q. 48. And up to what time?

A. Well, I would not want to put it beyond 1882, but when I come to reflect I am satisfied it was before 1878.

Q. 49. Now from 1878 to 1882 and up to the time of his death, what was the relation between Thomas W. Means and John Means in the matter of business as far as having regard to the dominion of the one over the other and which if either was the dominant party?

Objected to as suggestive, leading, irrelevant and incompetent and upon the ground that it was not made in the hearing of any party to this action, as far as the record shows and it is a matter of opinion and not a fact.

A. Oh, John Means had almost exclusive control of his father's business and matters from 1878 to 1882, and Thomas Means did not transact any important business without consulting and acting under the advice of John Means. William Means was absent from that region at that time, and the only living son at that time was John Means and there were no nephews, I don't think at that time who took a very active part in managing Thomas W. Means' business.

Q. 57. Did you visit Mr. Means at Ashland?

A. Not often. I was at the homestead quite frequently after '88.

Q. 58. After the failure of the Metropolitan bank?

A. Yes, sir; at the homestead. That date and 1888. 1888 to 1892 I was not there to amount to much that I can recall.

Q. 59. The Metropolitan bank failed, I believe, on the 7th of February, 1888?

A. That is my recollection of the date.

Q. 60. Did you come to Cincinnati that time, and when did you arrive?

273 A. I came to Cincinnati a day or two afterward—either Tuesday or Wednesday, I am not positive which it is.

Q. 61. How long did you remain in Cincinnati?

A. From that date I remained until one week from the following Saturday, I think—went home for a day or two and returned and was constantly with William Means from the date of the bank failure until he went to Yellow Springs, which was about the close of the month, I believe. We ate at the same table and slept in the same room and were constantly together. I don't believe he did anything without advising with me. After we would consult an attorney about any matter or any friend we would talk it over together.

Q. 62. State, if you know, whether Mr. William Means knew that it was contemplated to pay to the bank one hundred and twenty-five thousand dollars which has been referred to as having been paid by John Means on the 15th of February, 1888, before the payment of it?

A. I know positively that William Means did not know that it was contemplated to pay this one hundred and twenty-five thousand dollars before it was paid. It was not suggested to William Means on John Means' first trip, that this amount was to be paid. On the second trip of John Means to Cincinnati, when I think the amount was paid, John Means came to Cincinnati and remained here about one day; did not see William Means and paid that money in the bank at that time without consulting William Means, without his consent, without his knowledge and without his authority. On the day that was paid the first intimation that Mr. Means had that that amount was paid was Henry Hanna came

there and asked him to sign an order turning over certain securities from this man Sanders to John Means; and when William Means asked that question in surprise, whether that amount had been paid, John Means took the matter in his own hands and in an arbitrary manner paid that money. Henry Hanna told him that the money was paid. That was the first intimation that he had of it.

Q. 63. State if you know whether the payment of that money at that time, met with the approval of William Means when he learned of it?

A. Yes; William Means always objected to that, and in his letter to John Means, which John Means has received, you will find there his objection. He wanted that fund, and expected to use it for a different purpose.

274 Answer objected to.

Q. 64. The question refers to the time when Mr. William Means was made acquainted with the fact that the payment had been made. What expression did he then make to you, if any, signifying his approval or disapproval?

Objected to.

A. Why, he said that he had been advised by Job Stevenson not to pay that money, and submitted that advice to me for my approval, and I approved it, and he strongly objected to John Means paying that money without having consulted him about it. He then asked Henry Hanna if that settled everything, if he was a free man, and Henry Hanna told — that he was.

Answer objected to for the reason above stated.

(Witness continues:) This Job Stevenson is the Honorable Job Stevenson, of Cincinnati, a lawyer and the prominent member of this bar. I remember that Job Stevenson stopped William Means at the Grand hotel. I heard him advise him that.

Q. 65. Was that before the payment?

A. Yes; that was before the payment.

Q. 66. What did he say?

A. He told him not to pay that money. He said that this was an election year, that the Government was like a Juggernaut's car, it would crush him anyway, and not to pay that money.

Answer objected to.

That that year was election year and as Stevenson put it, they would prosecute him anyhow, whether he was innocent or guilty. I heard Stevenson advise him myself in the Grand hotel at the time he advised him.

Answer objected to.

Q. 67. So far as you know, did Mr. Means change his opinion upon that subject?

Objected to.

A. Always in my presence he objected to that payment, and I

knew of him writing letters objecting to the payment of it to John Means afterwards.

Answer objected to.

(Witness continues:) Not only objected to the payment, but also objected to John Means' manner of paying it, without coming to see him and talking to him about it.

Objected to as hearsay.

275 Q. 68. Do you know, and if you do you may state why William Means executed a note for one hundred and twenty-five thousand dollars?

A. John Means insisted upon his executing a note, and he was compelled to do whatever John Means told him to.

Objected to as hearsay and opinion.

Q. 69. Why?

A. Well, because Henry Hanna threw the influence of John Means had signed the bond. I think John Means signed the bond.

Q. 70. What bond?

A. The bond for his appearance in court, and also I think there was a charge preferred against him in one of the lower courts. I think there were two sets of bonds, and if I am not mistaken, Henry Hanna's name was on both bonds and John Means'.

Q. 71. Was he indicted?

A. Yes, sir; he was indicted, and he was under bond after February 7, 1888, and dependent almost solely after he procured the bond upon John Means. John Means did not help us to get up the bond in the first place, but after the bond was given he depended almost solely upon John Means to get bond.

Answer objected to as being an opinion and hearsay, incompetent and irrelevant.

Q. 72. When was William Means arrested by the United States authorities?

A. I think it was on Monday or Tuesday, the 7th or 8th of February—I am not positive about the exact dates—1888. Then we started to get bond for him.

Q. 79. Then, after the failure of the Metropolitan bank and after William Means' arrest, did he turn over his personal securities and belongings to any person, and if so to whom?

A. He first turned over about all his personal securities and assets to Sanders, and they were turned from Sanders to John Means, at the time, I think, of the payment of the hundred and twenty-five thousand dollars.

Q. 80. Then, what became of his holdings?

A. Well, I don't know as he had any to amount to very much. He may have had some odds and ends, but the bulk——

Q. 87. Was not everything he had turned over?

A. That is what I am stating now, that nearly everything of any important value had been turned over to John Means at

the time of the payment of the hundred and twenty-five thousand dollars.

276 Q. 88. Then at the time he executed this note, do I understand you that John Means had all of his personal belongings of any value and that he was indicted and under bond and dependent of John Means for the retention of those bondsmen, to secure or to continue his personal liberty?

Question objected to as leading and argumentative.

A. Before I can answer that question I want to fix the date, whether you mean the date as it appears upon the face of the note.

Q. 89. The date the notes were executed, the record shows that the first one was executed about the 22nd or 23rd of February, 1888, and dated the 15th of February.

A. That is the way I understand. On the 22nd day of February John Means had about all the securities and personal assets of William Means, and he was entirely dependent upon John Means for his bond.

Q. 90. When those notes were executed at New Haven in November, 1888, what was William Means' condition at that time, with reference to dependence upon any one else and upon whom?

Objected to because it calls for an opinion and not for a fact and is incompetent and irrelevant, and because it is hearsay.

A. Dependent for what?

Q. 91. In any manner. I do not want to make the question leading.

A. Why he was dependent upon John Means for the purpose of his bond and in his condition was compelled to do it whether he wanted to or not, whatever John Means requested him to do.

Objected to as opinion and hearsay.

A. We had trouble in getting up this bond in the beginning. It was a very serious question with us, and we had to walk over these streets of Cincinnati very lively to get a bond. That was before John Means came here, and when he arrived here he took charge of the bond question and we relied upon him altogether in making up the bond, and had he failed us William Means would have had to go to jail, and we were fighting hard and desperately against that.

Q. 92. Look at the paper now handed you and state from that if you can when the bond was raised and to what amount.

A. On the 30th day of November, 1888, in the sum of one hundred thousand dollars, signed by William Means, John Means, Henry Hanna, C. M. Holloway.

277 Q. 96. State, if you know, what the understanding was in pursuance of which those notes were given, with reference to whether it was a permanent adjustment or temporary.

Objected to as leading and suggestive, and as assuming that there was an understanding.

A. It was temporary. It was represented to William Means by John Means, and John Means wrote to William Means that there was danger of his liability as a director in the bank and as president of the bank, and other liabilities; that his interest in the estate would be attached, and the object was to put this in such shape for the time being, or, as John Means puts it, till the storm would blow over.

Objected to as not stating a fact but an opinion. It is not the best evidence; the letter itself is the best evidence; and as being incompetent.

Q. 97. In all these matters, who was the personal adviser and personal confidant of William Means from the time of the failure of the bank until he was acquitted?

A. I was. I think he let me know everything that went on. I don't think he kept from me a single thing.

Q. 98. State, if you know, whether there was any understanding as to what was to be done when, as you have stated, the storm blew over.

A. Why, then there was to be a final adjustment of matters between John Means and William Means, for whom John Means was acting.

Objected to, as there is nothing to show that this gentleman was present when any such arrangement was made, and therefore it is simply a matter of opinion.

Q. 99. What agreement, if any, or understanding, if any, was had, or was any had, that these should be charged against William Means' portion of the estate?

A. None that I know of, as between those two. I want to make that answer a little plainer in this respect. Now, there were some agreements or papers which you might call iron-clad; papers signed by William Means, and in those agreements or papers there might be mentioned the word "charged against the distributive share of William Means in his father's estate, but that was to protect his interest in the estate from the attack of the creditors, and, later along, from the attack of William Means' wife for alimony, and some other matters.

Answer objected to as being hearsay, the expression of an opinion, and not being responsive to the question.

278 Direct examination by Mr. GLIDDEN:

Q. 105. I will call your attention to the paper now handed you and ask you what it is, and whose handwriting, if you know.

A. It is John Means' handwriting. Letter from John Means to William Means, dated February 24, 1888.

Q. 106. Is that one of the letters referred to by you yesterday?

A. Yes, sir.

Q. 107. What is the clause in the letter that you referred to?

A. "After the storm passes over, we can arrange about them."

Letter offered in evidence, marked Exhibit 60. Copy of same is as follows:

EXHIBIT 60.

April 4, 1893. B. Perin, Sp. Ex.

ASHLAND, KY., *24th February*, 1888.

Wm. Means, Esq., Cincinnati, Ohio.

MY DEAR WILL.: Yours of the 23rd inst. to myself, and one to our father are at hand. Besides the securities lifted on the 15th at Metropolitan National bank, you also handed me on the 18th others, viz:

Receipt of Covington Transfer Railway Company—for 1st call ten per cent.....	$500
Receipt of Manufacturers' Land and Improvement Company, call 5 %	250
Certificate No. 66 for 200 shares each $50 Kentucky Iron, Coal & Manufacturing Company	10,000
Certificates Nos. — for 423 shares each $100 Roan Mountain Steel & Iron Company	42,300

I think it may be prudent and safer, to send me authority to dispose of these, like that sent with regard to the others, after the storm blows over we can arrange about them. Have left the whiskey trust with Mr. Hanna to dispose of at his discretion. Shall not need the money until note of March 13–16 comes due, and could get through then without the proceeds. Had letter last evening from Capt. Holloway, which was answered this morn. Inclosed to him draft for one thousand ($1,000) for you. Please acknowledge. Leave tomorrow at 6 p. m. for N. Y. All well.

Yours truly, JOHN MEANS.

279 Q. 110. I will call your attention now, Colonel, to Exhibit No. 4 of this record—letter from John Means to William Means, and ask you if that is one of the letters referred to by you yesterday, and the portion of it to which you referred?

Question objected to as leading.

A. Yes, sir, it refers to litigation, on the part of bank creditors against William Means. It reads:—letter dated February 20, 1888, signed by John Means and addressed to William Means—that portion of the letter reads: "I also think it best for you to have as you have indicated fearing suits be brought against you and other directors which may give you trouble as it now stands."

Q. 111. In that connection, Col. Williams, I will ask your attention to the paper now handed you and ask you what it is and in whose handwriting it is?

A. It is in the handwriting of John Means, signed by John Means addressed to Wm. Means, dated February 16th, 1888. It is a letter.

Q. 112. Is that one of the letters referred to by you yesterday in your testimony?

Objected to as leading.

Q 113. What portion of that letter did you have reference to? Read it, please?

A. "I think you had better send me notes at one day in father's favor for the amount. Had a talk with E. F. Williams on my way up and when I explained to him he agreed with me that this is best to close up the matter at present. He may write you."

Letter offered in evidence, marked Ex. 61. Copy of which is as follows:

EXHIBIT 61.

Cinc'ti, April 4, '93. B. Perin, Sp. Ex.

ASHLAND, KY., 16*th Feb.*, 1888.

DEAR WILL.: I reached home at 1 p. m. today. Hattie and Cook came last night, have not seen father or Maggie; will see them tonight. Have been busy this afternoon making entries of my transactions yesterday, examining, sorting and listing notes and collaterals. My payments yesterday for you amounted to one hundred and twenty-five thousand nine hundred and eleven $\frac{74}{100}$
280 ($125,911.74) dollars. I think you had better send me note at one day in father's favor for the amount. Had a talk with E. F. Williams on my way up and when I explained to him he agreed with me that this is best to close up the matter at present. He may write you. Will try and send you $1,000.00 tomorrow or next day. Almost train time.

Yours truly, JOHN MEANS.

Q. 114. The letter to which your attention has just been called and which is marked Exhibit 61, states that John Means had a talk with you on the way up and explained to you and that you agreed with him?

A. Yes, sir. We discussed the situation very carefully and at length and we came to the conclusion.

Q. 115. Please state what explanation John Means made to you then and what it was that you agreed with him about, as he here states; please explain fully.

A. We agreed to have William Means sign that note for $125,000 so as to protect his interest in the estate against the attack of creditors. At that time John Means had assigned over to him individually, as we thought, sufficient securities to pay all he had paid into the bank. We did not wish the creditors to know that William Means had assigned these securities to John Means. This note purports to be dated and executed February 15, 1888. It was not executed until about February 22, 1888. This note calls for $125,911.74, but about February 22, 1888, there had been realized in cash by John Means, and is now marked upon the back of the note as payment the following amounts: 1888, February 17, $12,500. February 20, $16,300, making a total of $28,800. So that that consideration is wrong, that $125,000 in any event.

Counsel for defendants moves to strike out the last part of answer as argumentative and not the statement of any fact.

Mr. HAGER: Are you testifying as a matter of personal recollection as to what John Means had done when he received those payments, or are you testifying about those notes from the endorsements on the notes.

A. I am testifying to facts that I knew outside of the record, but I would have to use sometimes the record to refresh my recollection as to dates and amounts.

Q. 116. Mr. Williams, after the interruption I will recall your attention to the original question as to what it was that Mr.
281 Means explained to you; what reasons, if any, he gave you why this note should be executed?

A. In case the creditors attacked William Means' interest in the estate the note would show the indebtedness of that amount from William Means to the estate.

Q. 117. Was anything said at that time as to whose benefit it would be for that it was protected?

A. William Means'.

Q. 118. Was anything said at that time as to the matter of enforcing that claim as against anybody else but the creditor as against William Means himself?

A. I don't know as I understand your question.

Q. 119. Last question repeated.

A. The claim was not to be enforced against William Means. The note was given for his protection alone. Mr. John Means then had, as we thought, sufficient securities to pay him every dollar which he had put into the bank. It was an absolute transfer of these securities. The total face value, I think, was $259,000 and we did not owe, as we thought, the estate, or John Means, a dollar at that time.

Objected to as not responsive to the question.

Q. 120. Did not John Means, when he paid the Metropolitan bank, pay the notes of William Means secured by these collaterals?

A. Yes, sir.

Q. 121. And did he, or not, at the time he was talking with you going up, the time he refers to in this letter, have the notes in his possession which he had paid or taken up from the Metropolitan bank?

A. I think he had the notes. He had lifted the securities, of course, from the bank. William Means gave securities for money borrowed from the bank, and all the securities which Sanders had he turned over to John Means.

Q. 122. But the point I am getting at is this. Those loans that William Means made from the bank, how were they evidenced as between William Means and the bank?

A. Promissory notes of William Means.

Q. 123. At the time, on the 22nd or 23rd of February, 1888, when this note of $125,911.74 was signed by William Means, had John

Means returned to William the notes of William which he had taken up at the Metropolitan bank?

A. I don't think he had returned the notes at that time.

282 Q. 124. I will ask you to look at the paper now handed you and state what it is.

A. Well, it is an acknowledgement of an indebtedness of $125,911.74 by William Means to Thomas W. Means.

Q. 125. Is that the paper referred to in your testimony as having been executed on the 22nd or 23rd of February?

A. Yes, sir.

Q. 126. Whose handwriting is the body of that paper in?

A. This is William Means' handwriting, of course. The body and signature.

The paper is offered in evidence as Exhibit 62, but the paper being already copied into the record in Exhibit 23, it is not recopied now.

Q. 127. In the conversation that you had with Mr. John Means going up the river which he refers to in his letter when this matter was explained to you by Mr. Means, who did you understand from Mr. Means had paid this $125,000 at the Metropolitan bank and taken these collaterals?

Objected to because it assumes that he understood something about the matter.

A. John Means not only understood, but did pay the money at the bank and then at the time he made the payment, about that time, Sanders turned over William Means' securities to him and Henry Hanna came to the hotel and got an order from William Means requesting Sanders to turn his securities to John Means and not to Thomas W. Means.

Q. 128. In the explanation that John Means then made to you, was there any suggestion by him to you at that time that he had made that payment as the agent of his father, or for his father?

A. No, sir, he never represented to me on that trip nor did I know at the *the* time of that conversation that the estate had ever paid one dollar of the $125,000.

Q. 129. You speak of the "estate." What do you mean?

A. I mean Thomas W. Means. He was then living. I am always getting it mixed up with his estate. And in our conversation he never mentioned the fact that Thomas W. Means paid it, but he used the word "I"—"I paid it." You will find the same expression in the letters to William Means from John Means.

283 Q. 130. Now, Mr. Williams, when was this note, if you know, or due bill of February 15, 1888, returned to William Means?

A. I think in 1890. I am not sure about dates. It may have been some time afterwards.

Q. 131. What connection as to time, if any, did it have with the execution of the $136,000 receipt?

A. I think it was given up along about that time—come to think

of it. I don't remember the exact date when that note was surrendered.

Q. 132. Mr. Williams, please look at the paper now handed you and tell me what that is? Whose handwriting is that?

A. I think Mr. Hager's, signed by William Means and witnessed by A. E. Lampton, dated October—there is a scratch there, I cannot tell the day—1890. October, 1890.

Q. 133. Read the paper.

A. Marked "Duplicate" at the head.

"Received, Ashland, Kentucky, October 18, 1890, of Thomas M. Adams and E. C. Means, administrators with the will annexed of Thomas W. Means, deceased, the sum of twenty-six thousand, two hundred and forty and $\frac{79}{100}$ ($26,240.79) dollars, being part of my distributive share as legatee under the will of said Thomas W. Means deceased." I cannot tell what the date is, whether 18th or 19th.

Q. 134. Mr. Williams, state what the arrangement was, or understanding was, if you know, in pursuance of which that paper was signed by William Means?

Objected to because it calls for an opinion.

A. Why, the understanding was that he was to get $26,240.79 and it speaks for itself, being a part of his distributive share in the estate of Thomas W. Means.

Objected to on the ground that the answer is the statement of opinion and not the statement of a fact.

This $26,240.79 was to be part of William Means' distributive share as legatee under the will of said Thomas W. Means, deceased. That is putting it more correctly.

Q. 135. Was this a separate transaction by itself or was it a part of a transaction?

A. This transaction in regard to the $26,240.79 and the transaction of $136,000 was really one transaction.

Q. 136. Now, state what that one transaction was, fully?

A. Well, we had a meeting there along about that date. I
284 think it was in some building in Ashland up above the hotel. Charles W. Baker and Mr. Hager, Cook Means and myself were there. Those were the only parties I now recall, and we had a conference. Baker and I agreed to sign their receipt for $136,000.

Q. 137. Agreed who would sign?

A. Agreed William Means should sign it. But before we agreed to that, Cook Means said that he represented his father, John Means and also Margaret Means—that they did not want any money which they individually let William Means have. I asked Cook Means if he would let William Means have that if they didn't have it, and he said they would. Cook started to figure as to how much William Means got individually from Margaret Means, John Means and Miss Adams, as I recollect it. The amount figured up—his first statement was about sixteen to eighteen thousand dollars. I then told Cook,

"Can't you swell it up?" That is the language I used. "We are to get that money, and make it as much as you can."

Q. 138. By "we" who did you mean?

A. William Means. And Cook started to figure again and he went up then to about $26,000, the amount in the receipt. I asked him if he could not make it larger—if he could think of something that he had not put in, and he could not. I don't think that these receipts were then signed at that place. We afterwards had a meeting. But in that conversation the question came up as to Miss Adams. Cook did not claim to represent her. I told him that the amount Miss Adams had let Mr. Means have was small and did not amount to very much and we could arrange that in some way and that that need not interfere. The amount, Mr. Cook Means then informed me, that Miss Adams had let Mr. Means have was about $1,600, as I recollect. In pursuance of that agreement, both of these receipts were signed.

Q. 139. Where was William Means at that time?

A. Do you mean at the time the receipts were signed?

A. At the time this understanding was had? At the time that this figuring was done?

A. We adjourned from the building, if my memory serves me right, to meet at the house, and it seems to me that the receipts were signed at the house, but I am not so sure of that. William Means was present when the receipts were signed.

Q. 140. That is not the question I am asking you. You have stated that at the time that this understanding was had, you
285 were present, Baker was present, Cook Means was present, and Hager was present. I am asking. where was William Means?

A. He was in Ashland.

Q. 141. In Ashland but not present.

A. I am not certain that he was present in the building, but he was present after we had put this agreement in writing by these receipts and signed them. I am not so sure that he was present in the building. Mr. Baker and I represented Mr. William Means.

Q. 142. Now, what did you state to William Means as to the effect of his signing these papers according to the understanding?

Objected to.

A. That he was to get this $26,240.79.

Objected to unless it was done in the presence of some of the defendants.

Q. 143. Last question repeated.

A. Mr. Baker and myself explained to him that he was to get this $26,240.79—that much anyhow.

Q. 144. Did you explain to him that that was your understanding with these parties?

A. Yes; I explained that to him myself.

Answer objected to.

Q. 145. Upon what inducement, if you know, did William Means consent to sign those two receipts?

Objected to upon the ground that William Means is the party who knows what inducement he had, and Mr. Williams cannot testify to that.

A. After we assured him he was to get this $26,240.79, he signed both receipts.

Q. 146. You have stated that you had another meeting at the house. Do you mean at Thomas W. Means' residence?

A. I think the next meeting we had was in Mr. Thomas W. Means' house—the old homestead at Ashland.

Q. 147. State what occurred there?

A. Well, we carried out the agreement, if I recollect right, and signed the receipts there. I think the receipts were signed at the old homestead. I think Mr. Adams was present there. I am not certain that he was present at the meeting in the office near the river.

Q. 148. Well, state all that occurred there?

A. Well, the receipts were signed up. There wasn't much
286 said. The agreement had been made before we got there and it was simply carrying out the agreement substantially as we understood it.

Q. 149. Were both receipts delivered then?

A. Yes, sir. Both receipts were delivered then—the $26,000 as well as the $126,000.

Q. 150. Did they then pay to William Means the $26,000?

A. No, sir. Cook Means and I had often discussed the manner of payment. I did not know just how convenient it would be to make these payments and Cook Means thought he did not need to pay this all at once—this $26,000—it might be inconvenient to pay it at that time. He spoke of it and said it would be all right.

Q. 151. Now, why wasn't the $26,000 paid? What was said and done about that?

A. It was understood it was not to be paid in cash, between Cook and I, but to be paid in installments.

Q. 152. What became of this receipt?

A. The administrators took that receipt—two receipts, and kept them, and afterwards this receipt, the $26,000, was cut up into three receipts. Instead of allowing this receipt to be in one claim of $26,240, I think there was a receipt executed for about $1,600 to Mrs Adams, about $16,000 to Margaret A. Means, and about $8,000 to John Means. I am testifying, as near as I can, to the amounts. Then Mr. Means soon after wrote me to come up to the old homestead. I went there. There was an envelope then upon the mantelpiece enclosing receipts for $26,000. Mr. William Means did not wish to do anything without my advice and wanted to know whether—(Conversation objected to.) He wanted to know whether to take back the receipts for this $26,000. I told him "No. If the executors wanted to go back on one part of the contract, let them go back on the other part of the contract."

Q. 153. Well, why did he ask you that? Had the executors refused to pay over the $26,000?

Objected to.

A. They took the receipts for both the amounts, you know, and then Mr. Adams handed William Means back the receipts for his portion of the money—the envelope enclosing it, and he informed me that he wished to do nothing in the matter until he had legal advice what to do and he requested me to come to Ashland to advise him what to do and whether to take back the receipt or receipts for $26,000. I advised him not to do it.

Answer objected to.

287 And he left the envelope with the receipts for his portion lying on the mantel and never took them back; so he informed me.

Answer objected to as to all that took place between Mr. William Means and Mr. Williams and as to the information that he got from him.

Then after that—I might as well tell this transaction as I understand it—after the administrators had refused to pay us this $26,000, Means came to Cincinnati, to Charley Baker's office. He said he was satisfied if he could arrange to get his brother and two sisters—get them to get this money from the administrators, that they would pay it. And thereupon Baker wrote up a paper directing the money to be paid to his brother and two sisters as trustee for him, or trustees. I don't know whether that word "trust" or "trustees" was used in the paper or not, but that was the import of the paper. I think I saw that paper.

Objected to as — all that purports to state the contents of the paper that Mr. Baker drew up, in addition to the other objections heretofore made.

Q. 154. Did you at any time prepare any paper purporting to be an equitable settlement in trust of the interest in expectancy of William Means in his father's estate, upon his family?

A. I did.

Q. 155. When?

A. I would rather not testify to that date until this afternoon. I want to refresh my recollection as to dates, and I will give you the date this afternoon and after looking over some papers, I will be able to fix the exact date.

Q. 156. For the present, can you state whether it was prior or subsequent to the death of Thomas W. Means?

A. I think it was before Thomas W. Means died.

Paper above referred to by witness, dated October 18, 1890, offered in evidence as Exhibit 63.

Q. 161. State whether or not the papers to which I call your attention are or are not the notes to the Metropolitan National bank,

or held by the Metropolitan National bank, which John Means paid on the 15th day of February, 1888?

A. They are. I think they are all marked with the same endorsement—"Received payment."

Q. 201. I will ask you whose handwriting the body of the paper now handed you is?

288 A. The body of it is in the handwriting of Isaac M. Jordan, attorney-at-law, Cincinnati, Ohio, now deceased.

Q. 202. Whose handwriting is the signature in?

A. It looks like mine. Signed "William Means" as a copy.

Q. 203. What is that paper?

A. It is a revocation of a certain paper dated June 16th, 1890.

Q. 204. State whether or not that is the original draft by Mr. Jordan?

A. It is all drawn up to there (indicating) in his handwriting. I think there were two sets of papers.

Q. 205. After the point you have indicated is "Yours respectfully"?

A. Yes, sir.

Q. 206. All with the exception of that, is his?

A. Yes, sir.

Q. 207. State whether or not a duplicate of that was signed by William Means?

A. Yes, sir.

Q. 208. At that time?

A. Yes, sir.

Q. 209. What was done with it, if you know?

A. It was served, I think, upon Mr. Adams and Mr. Cook Means at Catlettsburg, Kentucky, when they were at court. Mr. Jordan and Mr. Means and myself were at court together at one time shortly after the date of it.

Paper is offered in evidence, marked Exhibit 65, copy of which is as follows:

EXHIBIT 65.

Cincinnati, April 4, '93. B. Perin, Sp. Ex.

To the executors and legal representative of the estate of Thomas W. Means, dec'd, and to E. C. Means and Thomas M. Adams, individually.

GENTLEMEN: Inasmuch as by a certain paper dated June 16, 1890, it is claimed that I authorized certain notes to be deducted from or charged against my distributive share as heir-at-law of Thomas W. Means and (farther assigned certain intend to pay said note *sic*). Now, this is to notify you and all other persons interested therein that I hereby revoke and annul said paper-writing and all consent and authority conferred by it and declare said paper to be null and void for any purpose whatever and you are notified not to

289 deliver said paper to any person or make any use of the same.

And I make the revocation and notification for the following among other reasons:

1st. That said paper was not to be delivered without my consent.
2nd. Said paper was wholly without consideration and in operation for any legal purpose.
3rd. Said paper was signed without legal advice or proper information as to the contents and meaning.
4th. Said paper was obtained from me in ignorance of important and of my legal right.
5th. Said paper was obtained under circumstances that make it inequitable that I should be bound by it.
6th. Said paper was not intended to be used in any manner against my interest or desire.

Yours respectfully, WILLIAM MEANS.

Ashland, Ky., July 28th, 1890.

Q. 210. Mr. Williams, state fully what has been your personal or social relations with the Means family or any member of it.

A. Which Means family?

Q. 211. Any of the Means family—either Thomas W. Means's family or William Means's family, or both; state fully.

A. Well, I have been very intimately acquainted with William Means; a very strong friend.

Q. 212. State fully how it originated.

A. Oh, it originated way back in 1868, I believe. I got acquainted with him, was working in the mill at the time, and he sent me to school, paid the best portion of my tuition during the four years at college, and from that time on has always treated me as kind and thoughtfully as could be.

Q. 213. Was the fact that you were, as stated, a protege of Mr. William Means, known to Thomas W. Means?

A. Oh, yes, and I think that, to some extent, made him feel some interest in me, often talked with me and advised me when I needed advice.

Q. 214. At the time that this $136,000 receipt and the twenty-six-thousand-dollar receipt were executed, you have stated that you had regard to impending troubles with, or danger from, William Means's general creditors, state if you had regard to any other claims or parties asserting claims or rights.

290 A. Yes, sir; we had.

Q. 215. Well, what?

A. Just before this $136,000 receipt was signed, some time before that, Mr. Whitaker and Mr. Glidden, as counsel for Mrs. William Means and children, were pushing us for a settlement—by us, I mean William Means and myself, as friends and attorney for him.

Q. 216. So far as you know, was there ever any agreement upon the part of William Means that as against himself these notes or this indebtedness was to be asserted against, or be a charge against his portion of the estate of his father?

A. None that I know of, except for the purpose that I have previously stated in this deposition.

Objected to on the ground that it is incompetent and irrelevant.

Q. 217. Did you have that full, complete and intimate knowledge of the transaction of William Means in that regard, as that you feel that you — enabled to state what the arrangement was that he did make?

Objected to upon the ground that it is leading, that it is asking for an opinion and not for a fact; that it is incompetent and irrelevant.

A. He advised with me about all matters of any importance since the bank trouble and after he would consult with his other friends and attorneys he would generally consult with me and we two would determine what to do as best we could.

Answer objected to on the ground that it is argumentative, not responsive to the question and not a statement of fact; incompetent and irrelevant. Respondents' counsel move to strike out the answer.

Q. 218. Mr. Williams, at the time that this receipt for $136,000 that has been spoken of, was given, how did you arrive at the amount of $136,000? What computation was made or what papers examined?

A. We made no calculation whatever at that time.

Q. 219. Well, why?

A. Well, we were seeking to put this interest of William Means again under shelter and cover, and it made no difference to us how large the amount of the consideration would be.

Q. 220. Did you look at the endorsements on the notes at all at that time?

A. No.

Q. 221. Well, why? Let us understand. Why, in a trans-
291 action of that magnitude where it is claimed that $280,000 had been advanced and was evidenced by note, and that there was left due $136,000—now let us understand why it was not examined into.

Objected to because it is asking for an opinion of his own witness.

A. We could not make any final settlement at that time. It was impossible to do it. We had turned over these securities, the face value of which amounted to over $250,000. John Means had received power of attorney to sell these securities and convert them into cash and up to that time had not given William Means or myself a statement of the amount of cash realized upon these securities because, as he states, he was waiting until the storm was over.

Q. 222. None of these notes included within that list was a note for $75,000 executed at New Haven when it has been testified was for the money put up or securities put up without the knowledge of William Means at the time to induce a *nolle* or a pardon and which money or securities were returned to John Means who had put them up. Were you aware that in that $136,000, to make up that amount, entered as an element interest, a large interest charged upon that amount of money?

Objected to because its asks for matter incompetent and irrelevant and is leading.

A. Neither myself nor Mr. Baker, counsel for Mr. William Means, knew of that fact and the fact was not called to our attention until this examination took place, of John Means.

Answer objected to because it undertakes to state what Mr. Baker knew and to that extent is incompetent, and also adds when he discovered the fact, which is not responsive.

Q. 223. Did you then, acting as counsel for William Means, examine this receipt with reference to the application made upon the various notes as shown in the receipt?

Objected to as incompetent and irrelevant.

A. We did not.

Q. 224. Did you know whether the statement as to amounts was correct or not?

A. We did not. We had nothing to do with figuring up those amounts.

Q. 225. What do you know, Mr. Williams, in regard to the
292 Labrot matter and in regard to the payment of that amount, if anything?

A. I know the Huntington mortgage and ten $1,000 bonds were applied to the part payment of it and I know the trouble about the $10,000 defalcation on the part of Kebler.

Q. 226. What was that?

A. Well, before Labrot died he had employed Mr. Kebler to act as his attorney and after he died, Mr. Means allowed Kebler and his son to act for him as they had acted for Labrot, and there was a shortage of $10,000 there which Means objected to paying. Judge Hunt, I remember, came up in Isaac Jordan's office one time, as counsel for John Means, and Hunt insisted on paying that $10,000 and we objected and Mr. Isaac M. Jordan claimed that he ought not to pay it, that he was not responsible for its loss and that he could not make him pay it in law. Hunt claimed that Ramsey, Maxwell and Ramsey threatened to prosecute him and send him to jail and all that stuff and Isaac Jordan said that there was nothing in it and that they could not prove that he had embezzled it and he referred to some case he had there, but it was paid afterwards. Jordan told Hunt that there was no case of embezzlement under our Ohio laws. William Means, however, was willing to pay and anxious to pay except the $10,000 and that is one reason why Means objected to paying the $125,000 because he wanted to use certain securities, for paying the Labrot trust and he objected to John's paying them without speaking to him and consulting him about it.

Q. 227. Do you know who did pay what was paid on the Labrot trust?

A. Margaret Means paid the balance excepting the $10,000 of the Huntington mortgage and the ten $1,000 bonds I think, which made $20,000. The balance of it was paid by Margaret Means;

that is, her funds. I don't say she handed over the money to the attorneys.

Q. 228. Did you ever have any conversation with Margaret Means as to amounts that she had paid for William Means?

Objected to.

A. I remember meeting her at her home at one time and I think Mrs. Adams was present in the parlor. Miss Margaret Means says: "I understand you have been helping out my brother financially." "Oh," I told her, "it didn't amount to much;" it referred to some small check for $50 or $75 sent for William Means and I
293 was sorry I could not do more and said she had done far more than I had done and I hoped William Means would be able some day to pay her back every cent, and she said she did not want it.

Answer objected to as hearsay.

Q. 229. Did she say then what amount she had paid out?

A. No, sir. There were no sums paid out. I did not fix the amount that I had left William Means have up to that time, nor did she fix the amount that she had let him have.

Q. 230. Do you remember when that was?

A. I cannot remember much about dates. I was up there very frequently and had a good many conversations with Margaret Means in the fall of 1889, just before these trials. She was always very anxious to hear about her brother. I remember particularly we had quite a lengthy conversation about affairs and as to whether her brother should plead guilty or not guilty. She was referring that question to me the time I went up to see whether it would be better to employ McSweeney in the case.

Adjourned to Wednesday, April 5th, 1893, at 10 o'clock a. m.

By Mr. GLIDDEN:

Q. 231. I will call your attention to Exhibit 24 attached to the deposition of John Means in this record and ask you if you saw the original letter shortly after it was received and if that was one of the matter- referred to by you in your testimony, and if so, to what portion of it.

A. I have seen the original letter and that is one of those to which I referred in my testimony. "As the intention of creditors to take judgment against you is apparent, they hoping to get them out of father's estate, your share. Moore and Hager advised to take your notes in his favor at one day for payments made."

Q. 232. I call your attention to a paper now handed you and ask you what it is and in whose handwriting.

A. It is in the handwriting of John Means. It is a paper addressed to Mrs. N. E. C. Means, dated March 23rd, 1889.

Mr. GLIDDEN: I desire to offer in evidence a portion of the letter as follows:

ASHLAND, KY., *March 23rd*, 1889.

294 DEAR SISTER: Yours of the 18th was found on my return home. You are well aware that W. was greatly in debt and that all he was worth would not have paid his individual debt alone to the bank which I paid, hoping the matter would end there. His other debts still unpaid, is a large amount. This being true could he possibly have made any arrangement other than to trust his brother and sisters, who have supported himself and family the past year?"

Q. 235. Well, what did you know, if anything, at that time in regard to the matter of claim made in behalf of the family against William Means?

Same objection.

A. I knew before these receipts were signed in October, 1890, that Mrs. Means was threatening to institute legal proceedings against William Means quite a long time before that for the support and maintenance of her children and also for herself—a suit of alimony against William Means. I did all I could to prevent that suit for alimony and to prevent a family scandal. I worked hard to prevent it.

Q. 236. Do you know whether Mr. John Means knew anything about those threats or not?

A. Yes, sir; Mr. John Means knew that Mrs. Means was about to bring legal proceedings.

Counsel for respondents object to the question as to what John Means knew and insist if any testimony as to his knowledge is to be obtained from this witness it must be as to facts.

Q. 237. Upon what do you base your statement that John Means knew? How do you know that he knew?

A. Well, I was there as a member of the family of William Means and his wife, and knew just as much as a child could about what was going on in the family, and more so than the children, because there were matters that they would talk about to me and they would not to children. Mr. Means and Mrs. Means always showed me their letters and never kept any from me that I know of, and I saw the correspondence between John Means and Mrs. William Means. She would often take copies of her letters and often I was present when she was writing them, at her home at Yellow Springs.

Respondents object further to any statements of the witness as to contents of letters and correspondence.

Cross-examination by Mr. ANDERSON:

X Q. 238. Mr. Williams, you spoke yesterday about work-
295 ing in the mill prior to the time that you were at school. In what capacity did you work?

A. At what they call the boiling furnace in the rolling mill, and, also, at the rolls.

X Q. 239. How old were you when you quit that and went to school?

A. Well, I was about twenty years old, that is, when I quit and went to school. I never quit the rolling mill altogether after I went to school. I went in the rolling mill, and helped to pay my expenses in the mill. We had a long vacation, from June to September, about three months.

X Q. 240. Prior to that time had you become personally acquainted with Mr. William Means?

A. Why, we lived down on the pike, and I knew him just as well as boys will know people passing along. I was not *not* intimately acquainted, as I became afterwards.

X Q. 241. Were you personally acquainted with William Means prior to that time?

A. I did not know William Means intimately prior to that time, in '68.

X Q. 242. Now, until you became acquainted with Mr. William Means, your acquaintance with Thomas W. Means and his family was such as persons living in the same neighborhood would have with one another.

A. I knew him just like one of the boys would know a neighbor that way.

X Q. 243. You didn't visit his house?

A. I don't remember that I did. We were not very intimately acquainted until after '68.

X Q. 244. You say you were not intimately acquainted. Were you intimately acquainted with any of the family up to that *that* time?

A. I never visited their home until '68, that I recollect. We were there in the country, and we went over their farm, and hunted on their farm.

X Q. 245. How soon after you became acquainted with William Means did you start to s-hool, and where?

A. I first started to school at Antioch College, I think in '68.

X Q. 246. When you started to school were you in the preparatory or in the college proper?

A. Well, you see, I remained at Antioch but a short time, and "doubled up," as the boys call it, and had a private tutor outside of the regular teacher. I went but a short time to Antioch, and slipped into the freshmen class there at the Ohio Wesleyan University in '68.

296 X Q. 248. At what time did you enter college?

A. I was matriculated at Ohio Wesleyan University in '68.

X Q. 250. And what did you do next?

A. Well, in my senior year of 1872 I was studying law. I had my name registered as a law student in addition to my regular studies; and I worked night and day, and after I graduated I continued my law studies at Ironton.

X Q. 252. While you were in college did you go frequently to the house of Mr. Thomas W. Means, or was it after you graduated?

A. Oh, of course, I went to his house when I was at home; but I was away from there when I was at school.

X Q. 256. Did you transact any business for Thomas W. Means at this time?

A. Yes, I did, a little; after I got out of college. We had a little suit. He invited me down to his home shortly after I was admitted to the bar; somebody was charged with stealing pig iron, and he spoke to me about defending it. I think some fellow had a trumped-up suit for three or four hundred dollars, more or less; I don't remember much about it.

X Q. 258. What other business did you do for Thomas W. Means, if any?

A. Thomas W. Means was a man who didn't go into court much. He kept out of it. But I did not consider myself his main attorney.

X Q. 294. When the bank failure took place I believe, you have stated you came down here the day after the failure or the same day?

A. It was about Tuesday. The failure—you know there was a run on the bank a couple of days before that. It was about Tuesday, February 8th, I think.

X Q. 295. What day of the week did the bank fail?

A. I don't remember the exact dates. I think William Means was arrested Monday and that was the wind-up of the business.

X Q. 296. At any rate it was fully a day or two after the failure that you came here?

A. A short time. I was the first one on deck.

X Q. 297. When did you first see John Means after that?

A. Why, John Means came down to the Grand hotel a few days afterward after his first trip.

X Q. 298. You remained here all the time until he did come, after you came down?

297 A. Oh, yes. We were busy hunting up bond for William Means and getting counsel, speaking to them, and John Means never paid much attention to what we did. I will tell you that now.

X Q. 299. Well, in point of fact haven't you given the first bond or hadn't William Means given his first bond after his arrest before John Means came down?

A. There was a small bond given, Mr. Anderson, I think, before I got here, before ever John or I got here.

X Q. 300. Didn't John Means after he got here voluntarily go and put his name upon the bond that had been given before?

A. I cannot say that. He did not in my presence. I had to run over Cincinnati and hunt up Charley Holloway on that bond and had hard work to get him to sign it. I went down to his place of business on Front street. I asked him if he would sign that bond; he would be fully protected, but Mr. Holloway was not so very anxious to sign the bond and I brought it up to Mr. Means, I think.

X Q. 301. Now, after Mr. John Means came here the first time

after the failure, did you have any interview with him yourself individually?

A. Oh, yes. John Means met me in front of the desk at the Grand hotel and we talked together quite frequently at the Grand hotel.

X Q. 302. Didn't you have any conversation with him in the presence of William Means?

A. Yes, we were in there together with Mr. William Means. On the first trip I am talking about.

X Q. 303. How many conversations did you have and what was said on that trip?

A. He did not say very much but he thought a good deal.

X Q. 304. Well, what subject did you talk about?

A. Well, we talked about the bond business.

X Q. 305. Nothing else?

A. Oh, lots of matters and something I do not care to mention.

X Q. 306. Well, I am asking if you talked about other things and you can simply say yes or no.

A. Yes.

X Q. 307. Now, wasn't there anything said in that connection about the propriety of paying to the bank the $125,000?

A. He left us with no assurance that that amount would be paid.

X Q. 308. Be kind enough to answer my question.

A. I don't recollect that John Means ever told us that that
298 money would be paid or that any one else would pay it.

X Q. 310. Now, wasn't there anything said in that conversation about the propriety of paying to the bank the $125,000?

A. I don't recollect of any.

X Q. 312. Ever at any time?

A. Not on that first trip.

X Q. 314. Mr. Williams, I don't think you catch my question. I asked you when was the propriety of paying the $125,000 to the bank first discussed in your presence by any one, if at all?

A. Well, I stated to you after the payment was made.

X Q. 315. It was first discussed in your presence after the payment was made?

A. That is my recollection of it.

X Q. 316. Then, by whom?

A. Why, with John Means, on the trip up the river that we had on the steamboat.

X Q. 317. That was the first conversation that was ever had in your presence on that matter up to that time?

A. About that particular transaction of paying the $125,000, that I now recollect. There was some outside talk about paying the money into the bank in a general way before that.

X Q. 318. Then you remained in Cincinnati until you went up the river with John Means after that payment, and how soon after did you next return to Cincinnati?

A. I returned in a few days after I learned that matters had not been settled.

X Q. 319. What matters?

A. William Means' criminal troubles.

X Q. 320. Well, "settled," what do you refer to in that respect?

A. Why, when Henry Hanna came there, you know—I had forgotten that transaction—he told that that would settle everything, you understand, in a general way, and we took it for granted that that was settled. That was just before we went to the boat. He came to us and we went home believing that everything had been settled financially and the criminal matters.

X Q. 321. Well, you started home then thinking the whole thing was closed up, did you?

A. After we got on the boat. That was the information we received from Mr. Hanna and from Mr. John Means.

X Q. 322. You did not get that until after you got on the boat?

299 A. Mr. Hanna told us that when he came to the Grand hotel. That was a short time before we got on the boat.

X Q. 323. That was what caused you to start home?

A. Well, that was one of the inducements.

X Q. 324. Well, just state as nearly as you can in substance and briefly, what Mr. Hanna said.

A. Henry Hanna did not say much. He said he wanted William to give an order to turn over those securities to John.

X Q. 325. Is that all that you can state that he said?

A. Well, he told me it was settled.

X Q. 326. What was settled?

A. William Means' criminal suit and civil suit.

X Q. 327. Did he say that all the criminal suits and civil suits were settled on the payment of that money?

A. I don't think he used your exact language.

X Q. 328. In substance that?

A. He gave us to understand it was settled.

X Q. 329. Did you begin to congratulate Mr. Means or anything of that kind?

A. Well, I was feeling pretty good when I left.

X Q. 331. What did Mr. Means do at that time, when Mr. Hanna gave him that information—what did he say?

A. He was startled and surprised and asked him why it was done. Don't get those two trips mixed up. We are talking about the second trip.

X Q. 332. Yes. The time the $125,000 was paid.

A. That was on Wednesday.

X Q. 333. Mr. William Means was opposed to that?

A. I am talking now about when Henry Hanna came down. This was on the first trip of John Means, when those securities and that is when he was surprised.

X Q. 334. Let us understand each other. I am talking about the time when the $125,000 was paid, and Mr. Hanna went to the hotel and notified him that it had been paid.

A. That was on the second trip.

X Q. 335. And as I understand you to say, that all the criminal

and civil matters connected with the bank, were settled—that is, growing out of that bank matter—were settled.

A. I am referring to John Means' second trip on that next day when the $125,000 was paid and Henry Hanna come down to get an order from William Means to turn over these securities to John Means, and then he said substantially that it was all settled,
300 and it was at that time that William Means was surprised that that money had been paid.

X Q. 336. Well, I understood you to say yesterday that he was very much opposed to that payment as soon as he learnt it.

A. Yes, sir.

X Q. 337. Well, can you explain why he was opposed to it, when he understood and you understood that the criminal matter- were all disposed of, cleared up?

A. Well, yes, in one way. William Means had been informed that those indictments were not good. He had also been informed that they could not make out a case under those indictments; that the indictment averred that it was done to deceive officers, I think, of the bank, whom he and his friends claimed had helped him along and they could not be deceived and they could not prove it, and they did not. Another reason was, that William Means did not want the $125,000 paid down that way until these other parties would come in—Roth, Duckworth, Gerké, De Camp and whoever were the directors, would come along with their $125,000. Another reason was, that he wanted as much as he could get to pay on the Labrot trust and they had taken securities—innocently perhaps—that he intended to apply in the payment of this Labrot trust. He wanted the Labrot trust and he had always held securities in bank to pay it.

X Q. 338. Now, Mr. William Means was anxious to have those indictments nollied, was he not?

A. Yes, but he was not anxious that the Government should punish him, and John Means paid them in this money to the bank. He was not anxious for both of those things to be done and his family turned out to starve.

X Q. 339. He had made promissory notes for all that went to make up the $125,000 and they were held as paper of the bank, were they not, before the payment by John Means?

A. He had executed notes to the bank. I cannot give you a strict account.

X Q. 340. These aggregated $125,000 note at that time?

A. I don't know as to that. That was the amount that they reported to me.

X Q. 341. Well, you believed it to be the case, didn't you?

A. Well, we did not have much to do with it.

301 X Q. 342. Well, in fact, are not these various notes you testified yesterday, the notes that were then held by the bank?

A. They are.

X Q. 343. And that that $125,000 took up these notes?

A. That is what Mr. John Means claimed.

X Q. 344. You know a good many things about this matter and you say that that is the fact?

A. I cannot tell you anything about that, except from John Means' statement that those are the identical notes.

X Q. 345. What did you believe about it?

A. I don't think I ever saw those notes.

X Q. 346. What do you believe about it?

A. As a matter of belief based upon this information that is my belief.

X Q. 347. How, then, could this $125,000 that Mr. Means paid to the bank make any difference with reference to his Labrot matter?

A. Well, you see the book of securities of Mr. Anderson, there were some securities there—they were there and I do not think all of them were used with those notes and a portion of the securities which he wished to pay the Labrot estate, was afterwards used by John Means.

X Q. 348. Well, the notes that the bank held were secured by collateral belonging to William Means?

A. Yes, some collaterals.

X Q. 349. And those securities were turned over with the notes to John Means?

A. Yes; he got all the collaterals, those that were with the notes and those that were not attached to the notes, and he got all substantially of the securities of William Means.

X Q. 350. The conversation that you had on the boat with Mr. Means, I understood in substance to say, referred in part as at least to the execution by William Means of this due bill or promissory note of $125,000 to Thomas W. Means and that that was not a real transaction, but intended to be a fraud upon the creditors of William Means. Is that what you intended to say?

A. That is not my language.

X Q. 351. I say in substance?

A. But substantially it was a legal fraud.

X Q. 352. A fraud?

A. Legal fraud.

X Q. 353. Who got up that scheme?

A. Well, the first information I got about it was from John Means. At that time and in subsequent letter John Means fathered the whole scheme.

X Q. 354. You understood clearly on your trip on the
302 boat with John Means that that was simply a sham and a fraud?

A. No, not the way you put it. To have executed the notes by William Means to John Means or to his sisters, would have left William Means' share in the estate open to the attacks of creditors or to anybody else, but by executing these notes in favor of Thomas W. Means or the estate—it was Thomas W. Means living then—to him would make an offset against the claim of creditors, or of any party attacking the interest of William Means in the estate.

X Q. 355. Well, you assented to that arrangement, did you, as attorney for William Means?

A. Well, John Means never cared much whether men assented or not, and I don't recollect what the result was. I will say that after the suggestion was made I was in favor of protecting his interest in the estate. I did not want it sold out or sacrificed all at once, and wish- to get all the time I could in the matter and in the delay.

X Q. 356. You then assented to that arrangement, as the attorney of William Means, to the giving of the $125,000 note to Thomas W. Means, because to give it to John Means and his sisters would leave the interest of William Means in the estate open to an attack of creditors, the claims of the brothers and sisters would not be offsets against the share, but the claim of Thomas W. Means would, is that what you understood at the time?

A. I cannot recollect that I assented. The facts are John Means ruled everything with an iron rod and didn't care whether a man assented or not. I did not cut any figure in the case. He did as he pleased.

X Q. 357. Well, did you dissent?

A. I don't remember that I did to any protection he was offering to prevent a certain class of creditors from attacking his interests in that estate. There were parties called creditors whom I do not think were honest creditors.

X Q. 358. How soon after that did you return to Cincinnati?

A. A day.

X Q. 359. A day afterwards. Could you give it more definitely?

A. No, I cannot give you the particular date any nearer than that—a few days afterward.

X Q. 360. Where were you on the 20th of February?

303 A. I am not certain, I think I was in Cincinnati.

X Q. 361. You think you were?

A. I think I was but I am not certain.

X Q. 362. Well, did you return to Cincinnati or to Ironton or leave Cincinnati before William Means had signed the $125,000 to Thomas W. Means?

A. My recollection is that after this trip up the river with John Means I remained a few days and came back and was in Cincinnati all the time up to about February 28th or 29th when, I think, William Means left for Yellow Springs with his wife.

X Q. 363. Were you here when William Means signed the $125,000 note?

A. I think I was but I am not so positive about it.

X Q. 364. He consulted you beforehand on that matter?

A. About which?

X Q. 365. About the $125,000 note before he signed it.

A. He may have consulted me about the matter.

X Q. 366. Did he show you the letter that John Means wrote when he asked him to sign it?

A. I cannot tell you that now. I saw the letter either at that time or shortly after.

X Q. 367. Did you make known to William Means that the claim of John Means was as you understood it?

A. No; John Means made that known to him, himself.

X Q. 368. Where?

A. I can't tell you where. There was nothing said in detail about it.

X Q. 369. Well, when?

A. He wrote him a letter. You will find it. I do not remember the date. Before the note was executed.

X Q. 370. Did you let Mr. William sign that $125,000 note without letting him know that your understanding of it was that it was a sham and a fraud?

A. I can tell you this, that will save a great many questions. William Means did whatever John Means told him to. That was all there was about it, because he was compelled to do it. There was no use asking the whys and wherefores or to spend any time discussing that.

X Q. 371. Last question repeated.

A. I have answered your question, sir.

X Q. 372. Is that the only answer that you can give to that question?

A. That is the only answer I have given.

304 X Q. 373. I will ask you if that is the only one you can give?

A. Why, no. I can give a great many answers, but I am not certain that they would be responsive.

X Q. 374. I would like full well to have that question answered.

A. I told you I have answered it.

X Q. 375. Do you decline to answer the question?

A. No. I claim I have answered your question, Mr. Anderson.

X Q. 376. I do not think your answer is responsive. You can answer that either yes or no, I think.

A. I won't give a categorical answer, and I can't to that question.

X Q. 377. Do you say that you don't know whether you did or not?

A. I haven't said that.

X Q. 378. What is your best impression about the matter?

A. About what? Let's get at what you are driving at.

X Q. 379. Did you let Mr. William Means sign that $125,000 note without letting him know that your understanding of it was that it was a sham and a fraud?

A. Well, I say this, that after the conversation with John Means on the boat, you will notice John Means says, "I explained it to E. F. Williams," that is his language—and then after John Means got home, he wrote a letter to William Means about it, and in pursuance of that letter William Means signed the note. That is the best answer I can give you.

X Q. 380. Now, Mr. Williams, you get back to the point. You can give a better answer, perhaps, by refreshing your recollection a little. You have answered in substance that you had probably seen that letter and knew the note was there to be signed, and now my question is, did you advise Mr. William Means before he signed

and sent that note to John Means, that it was your understanding that it was a sham and a fraud?

A. I cannot recollect that I advised him in particular form of the statement which you set forth in the question.

X Q. 381. Well, did you advise him that in substance?

A. I don't recollect now of advising that in substance.

X Q. 382. What is your best impression about it?

A. I have given you my recollection and that is all I can do.

X Q. 383. You made a remark yesterday that that note was never to be paid by William Means. What did you mean by that?

305 A. I don't remember making that remark.

X Q. 385. That is your answer, is it?

A. No, I want to hear what the question is and I will make my own answer.

X Q. 386. My question is, Did you make the remark in your evidence substantially that that $125,000 note was never to be paid by William Means? Will you state if I am correct what you mean or meant by that statement?

A. I do not think that I made that statement the way you put it, and therefore cannot make you any answer.

X Q. 387. What is your recollection of that; of what you stated upon that subject?

A. I don't recollect of making any statement about that now. If I had made a statement and you will call my attention to what you refer to, I will answer you. My recollection is you are not quoting my testimony correctly.

X Q. 388. In point of fact, what was the truth about that matter as to whether the $125,000 note executed to Thomas W. Means was to be paid or not by William Means?

A. I don't remember that the question came up for discussion at that time.

X Q. 389. At what time?

A. At the time the money was paid by John Means in the bank and also at the time we went up the river.

Witness desires to correct his testimony as follows: There was something said about employing counsel. I was referring to the fact that we went to Ramsey and Maxwell's office once or twice to see them and employ them, and went up in the elevator and could not find them. That is what I was referring to.

Recess until two o'clock.

Cross-examination of E. F. WILLIAMS continued:

X Q. 390. What was, then, the first time that you heard that subject discussed by any one, where and by whom?

A. Oh, we had conversations about that note. William Means never was to pay that one note of $125,000 made to Thomas W. Means. That was to be charged as an executed gift so far as the estate had given money over to William Means. Nearly all the

money came, as we thought—a good portion of it, at least—from the brother, John Means, and Margaret Means, and some
306 portion of it from Mrs. Adams. And Cook Means afterwards represented to me in the presence of Baker, Hager—I recollect them particularly—that John Means and Margaret Means did not want any money, which they individually let William Means have, but that he could not speak for Mrs. Adams.

X Q. 391. I don't understand that your answer yet is responsive to the question Where?

A. I have given my answer as near as I know how. If you will ask another question, wherein I have failed to answer, and state the question more specifically, I will endeavor to answer in a more specific manner than I have.

X Q. 392. I don't think I can put that question in a more specific manner than I have. I confess my inability to do so.

A. I have answered that question as well as I know how.

X Q. 393. Do I understand you, then, that the first time that you recollect of that subject being discussed, was at the time Mr. Hager and yourself, and Cook Means and Mr. Baker met in Ashland, that you referred to in your examination-in-chief?

A. What subject do you mean now?

X Q. 394. I mean about that one hundred twenty-five thousand dollar note having been paid to the estate of Thomas W. Means.

A. Well, there were conversations between John Means and William Means about it.

X Q. 395. Before or after that time that you met in Ashland?

A. I think it was before that time.

X Q. 396. When and where?

A. I cannot give the date.

X Q. 397. State where then.

A. I cannot do that.

X Q. 398. Cannot state either the place or the time?

A. Could not to give any particular date.

X Q. 399. How soon after the note was given?

A. Well, I met William Means at Yellow Springs, and the subject was talked over.

X Q. 400. Who was present at that time?

A. Part of his family, up in his library part of the time, and we were alone at other times.

X Q. 401. I think you do not keep in mind my question, which refers to the first time.

A. Now, that was after he had gone to Yellow Springs, that conversation.

307 X Q. 402. What was the first time it was ever talked over?

A. Which was talked over?

X Q. 403. The question about that note having not to be paid to Thomas W. Means. What I am seeking to know, is when was the first time after you went up on the boat with John Means that you heard the subject discussed as to whether William Means was required to pay the note of one hundred twenty-five thousand

dollars that is in evidence here, that he executed to Thomas W. Means.

A. Why, there never was any understanding or agreement or demand that William Means was to pay that note of one hundred twenty-five thousand dollars. There could not be, because John Means held these securities amounting on their face value to over two hundred fifty thousand dollars. How could there be.

X Q. 404. Now, Mr. Williams, do you mean to say that the question was never discussed in your presence at any time?

A. There was some conversation about it, as I told you, at the springs. I do not remember the first time.

(Mr. WHITTAKER:) The first time was at the springs.

(The WITNESS:) I have been trying to tell you that there never was any conversation where it was stated that William Means was to pay that note. Why do you ask me, when I say there was no conversation wherein it was stated that William Means was individually to pay that note?

X Q. 405. Do you mean to be understood that there was never any conversation on that subject at any time up to the time that you met with Hager, Baker and Cooke Means, and others, in the building at Ashland to which you refer in chief?

A. I meant to say that I never heard any conversation take place wherein it was said by anybody that William Means was to pay that one hundred twenty-five thousand dollars to the estate, because he did not owe that one hundred twenty-five thousand dollars, for the reason that I have told you, and so far as the estate had advanced any money, it was an executed gift to William Means. The estate had already presented Culbertson one hundred thousand dollars for the first loss, and they did not expect that William Means nor that Thomas W. Means should pay any amount that the estate had let him have. John Means never insisted upon William Means paying any money that he let him have individually.

308 X Q. 406. Now, Mr. Williams, if you will pay attention to my question and answer it, you will get along faster, and I think if you understand it, you will answer it. I think, perhaps, you have got some wrong impression in your mind. I am trying to get at the first time——

A. I want to correct my answer. I do not remember exactly the amount of the Culbertson loss. It was over one hundred thousand dollars, and may be somewhere near one hundred fifty thousand to the estate, but Thomas W. Means never charged him with it.

X Q. 407. Let us go back to this other matter. Just hear my question, and give an answer, and we will get along much faster. Now, what was the first time after that note was given that you have any recollection of hearing anything said by anybody in your presence, or to you, or by any one, as to whether it was to be paid, or whether it was not to be paid.

A. Now, let me clear myself up, if I am not clear. There never was a conversation or an agreement, or an understanding that I know of, by which William Means was to pay this one hundred twenty-five thousand dollars, or a little over maybe, payable to

Thomas W. Means, nor any conversation that I know of wherein William Means was to be charged with any amount which the estate, or rather Thomas W. Means—I call it an estate for certain reasons there—had used, if he did, in any payment of that nature. Now, I cannot answer that question any more definitely. It was charged just like the Culbertson loss. It came under the head of that. If Thomas W. Means was ever consulted he never intended that William Means should be charged one cent for that. I cannot make it any more definite. There was never a letter to show that the estate held William Means but that it was to be an executed gift under the will. That is what I am trying to get at.

X Q. 408. Now, you have referred to the fact that this one hundred twenty-five thousand dollars, as you understand it, was to be treated as the Culbertson loss and as an executed gift under the will. Did you hear any conversation with any person to that effect after that note was given; if so, by whom, when and where?

A. Your question is not a correct statement of my answer. Let me answer your question. I have referred to the money or what came out of the estate of Thomas W. Means but that was to be an executed gift. As to any money Margaret Means and John Means let William Means have, this referred to another conversation.

309 X Q. 409. Now, then, I am asking you as to that particular fund supposed to have come out of the estate of Thomas W. Means; that is, came out of his property and was paid by him; when, where and by whom did you hear any conversation as to it being treated as the Culbertson loss, and as an executed gift under the will?

A. Now, as to any portion, if any did come out of the estate of Thomas W. Means towards the demand of that note, why that conversation I have had with different parties.

X Q. 410. Well, with William Means, when, the first time I want to know?

A. I might have talked with him at the hotel before he went away. I remember I had some conversation after he left the hotel at the springs, and he called my attention particularly to this Culbertson affair and said there was a one-hundred-thousand-dollar loss; that there was a son-in-law of Thomas W. Means and he was a son, and I also knew what statements Thomas W. Means had made before he died in regard to not executing his whole estate, because he kept it back to provide for any child that was unfortunate and had bad luck.

X Q. 411. Now, have you stated the only persons with whom you discussed that matter?

A. William Means was mainly the person I can now recollect having discussed the question with.

X Q. 412. Can you recall any other person?

A. I cannot now.

X Q. 413. Did you know at that time approximately how much of the one hundred twenty-five thousand dollars had been raised or provided by Mrs. Adams and how much by Miss Margaret Means and how much by John Means, if any?

A. I do not know the exact amount.

X Q. 414. And how much by Thomas W. Means, if any?

A. I cannot tell the exact amount.

X Q. 415. I did not ask the exact amount.

A. John Means did not let us know what he was doing at that time. He did about as he pleased. He had our securities. I know that and he never rendered an account of them that I know of, nor what he did with the proceeds of the sale of the securities.

X Q. 416. Well you did know at that time that part of that money according to your understanding had been paid by Thomas W. Means?

A. No, I did not know that. I could not say.

X Q. 417. Well, you knew that part had been paid, as you
310 understand it, by Mrs. Adams, at the time you went up on the boat?

A. I could not say at that time going up on the boat just how the note was paid.

X Q. 418. You did not know from whom the money had been raised, did you?

A. I knew who paid the money into the bank, if that is what you want to know.

X Q. 419. I am not asking for that.

A. That is what I want to say, that John Means claimed on the boat that "I paid the money," and he used the word I with a very loud emphasis, if you want to know.

X Q. 420. You did not know from whom the money had been raised, did you?

A. I could only tell from information I got from John Means, when he told me, as he has written in his letters ever since, "I paid the money," referring to himself.

X Q. 421. Did you then believe that John Means, out of his own pocket had paid the whole one hundred twenty-five thousand dollars?

(Objected to as not material what he believed.)

A. I can only tell you that when going up on the boat that I had no one to talk with except John Means. He made the statement there and I had every reason to believe that his statement was correct, that he, John Means, had paid the money, and you will find that in all his letters, whenever he wrote to William Means, and the impression was prevalent through Ashland, whenever you would ask anybody who paid that money, and they would say, John Means paid it.

X Q. 422. Then at the time that William Means signed this note for one hundred twenty-five thousand dollars, payable to the order of Thomas W. Means, you had every reason to believe, and so did believe, that the money for which the note was given had been paid by John Means out of his own funds, did you?

A. I had the information from John Means that he paid the money. That is what I know about it.

X Q. 423. I am asking you if you had every reason to believe it? You either did or did not have.

A. So far as I could rely upon his statement when we went up on the boat; all the information I had from John Means then was that he paid the note. I have never seen it denied in any of his letters.

X Q. 424. What was to be done, according to your
311 understanding, with the proceeds of securities turned over?

A. Well, there was not much said at the time. Henry Hanna came down on that Wednesday on account of securities to be turned over to John Means. The conversation was very short. They were turned over to him. I might as well tell you, if you know it, that John Means and William Means are people that do not talk very much, but think a good deal.

X Q. 425. You were acting at that time as attorney for William Means, and I understand you were advising William Means to execute this note?

A. He then had other counsel in the case, belonging to Cincinnati.

X Q. 426. I know, but you were supreme counsel to whom all things finally came?

A. When we were together we talked over things as friends. There is no use ridiculing that.

X Q. 427. I am not ridiculing that, but you testified to it yesterday that everything came to your final judgment, in effect; we understand each other. What I am seeking to know is that you advised the execution of this one hundred twenty-five thousand dollar note to the order of Thomas W. Means, knowing that the whole funds, as you believed it, which took up the obligations to the bank to that amount, were paid by John Means individually. Now, what was your understanding as to the application to be made of the securities that were turned over with this note to John Means?

A. The trouble about answering your question is this, that John Means would not let us know anything about what he was doing with those securities, which he got from us, and kept back from us, and I have not seen an account, unless you gentlemen have gotten it here in the examination, what he ever did with the proceeds of those securities.

X Q. 428. I am not asking you that.

A. If your idea is about this matter, which you have called a fraud as to the note made payable to Thomas W. Means—that is what you called it, a sham and a fraud—I will say that John Means was the father of that whole business and neither William Means nor myself was a party to what you have called a sham and a fraud.

X Q. 429. That is just what I am trying to find out.

A. That is my answer and it is no use to go along with that any farther. The whole of that scheme originated with John Means and not with William Means or myself.

312 X Q. 430. Well, now be kind enough to answer my last question. What I am seeking to know is that you advised

the execution of this one hundred twenty-five thousand dollar note to the order of Thomas W. Means, knowing that the whole funds, as you believed it, which took up the obligations to the bank to that amount, were paid by John Means individually. Now, what was your understanding as to the application to be made of the securities that were turned over with this note to John Means?

A. I have told you the only conversation that took place when Henry Hanna came down there and requested William Means to turn the securities over from Saunders to John Means and tell Means it was settled. They were not talking very much, Mr. Anderson. Now that is what took place, so you can make your own inference in the matter.

X Q. 431. Yet you do not answer me what you understood was to be done with the proceeds of those securities.

A. Well, I could not tell you what John Means intended to do with the proceeds of those securities. I knew that he would do as he pleased to do and he would not care what William Means and I wanted him to do with them.

X Q. 432. Did you tell him what you wanted him to do with them?

A. No, sir. It was no use for me to advise John Means. If I did it would have no effect upon him.

X Q. 433. Did William Means?

A. I do not remember of him doing it.

X Q. 434. Then you had no understanding upon that subject whatever, had you?

A. I have told you what occurred.

X Q. 435. Will you please answer the question?

A. I did not know at the time when he got these securities what he was going to do with the proceeds of them.

X Q. 436. Now, Mr. Williams, you have stated about other securities being turned over to John Means.

A. I mean other than those that he got from the bank as collaterals and the papers he took up there.

X Q. 437. When were they turned over?

A. I could not tell you when. There were some securities afterwards turned over and I could not tell you when nor could I tell you the amounts, nor the names of the securities, unless the papers were produced

313 X Q. 438. You can tell when it was done, whether it was before or after the note was given?

A. There were some securities turned over to John Means after the note was given. It is not a very large amount compared with the securities he got.

X Q. 439. Well, how much money back up to that time had William Means received directly or indirectly from John Means or through some one for him from that time up to the time that the one hundred twenty-five thousand dollars was paid.

(Objected to as there is no evidence that William Means had received any money from John Means.)

A. I cannot tell what you mean by indirectly.

X Q. 440. Well, in any sense whatever.

(Objected to as there is no evidence that William Means had received an- money from John Means.)

A. Do you mean from John Means individually?

X Q. 441. From anybody through his instrumentality—himself or others.

A. Well, I could not say. John Means attended to the business and he seemed to have some reason for not being willing to make William Means and myself acquainted with his transactions. I cannot fix any definite amount.

X Q. 442. Did you ever ask John Means for any statement with reference to those amounts at any time up to the present hour, and if so, when and where?

A. I have not but William Means has.

X Q. 443. When?

A. Well, I remember one particular date when we all wanted them to show up.

X Q. 444. When?

A. I remember the time when Ike Jordan was in Ashland there, we wanted this matter settled up. The time we served this notice.

X Q. 445. Where was John Means then?

A. I could not tell you anything about John Means.

X Q. 446. My question is, Have you ever asked up to this hour, John Means for any statement in that respect, and if so, where and when.

A. Well, personally I have not but William Means has.

X Q. 447. When?

A. After the trial.

X Q. 448. Where?

A. I cannot say as to any particular place.

X Q. 449. Who was present?

314 A. I could not tell you as to that.

X Q. 450. Were you present?

A. No, sir, I was not present, and the information I got from him.

X Q. 451. From whom?

A. From William Means.

X Q. 452. You were with William Means the last time?

A. At what time?

X Q. 453. Before he went to New Haven?

A. I cannot fix the date.

X Q. 453½. You went after the failure to William Means, fix the time when you went to New Haven?

A. No, I cannot, for I do not know.

X Q. 454. I cannot fix the precise time myself. I do not care about the date, just when you went before he started.

A. After he went to the springs I called to see him several times before he went East. I do not know just the exact place, but he went East in 1888. I cannot fix the date, Mr. Anderson.

X Q. 455. Did you visit him at New Haven?

A. No, sir.

X Q. 456. When was the next time that you saw him?

A. Why, in 1889, as near as I can recollect.

X Q. 457. What time in 1889?

A. I think the fall and winter.

X Q. 458. Was it after he returned from Europe?

A. I saw him after he returned from Europe.

X Q. 459. Was not that the first time after he started to New Haven?

A. I do not remember whether he came back or not after he went to New Haven before he went to Europe. I saw him whenever he was in Ohio—not always, but frequently visited him.

X Q. 460. Were you present when he executed any of the other notes?

A. I was not present when he executed those notes out East. I was in correspondence with him, though, when he was out East.

X Q. 461. Now, were any of the other notes that have been in evidence here referred to executed for a fraudulent purpose?

A. Why, all these no,—I do not want to state a legal conclusion—all these iron-clad notes and agreements and charges against the distributable share of the estate of William Means were gotten up for the same purpose.

X Q. 462. What purpose?

315 A. Why, it was turned over there in order that William Means' interest, his share in the estate, should have protection. That is what I meant.

X Q. 463. Well, what do you mean by protection?

A. Well, I know what they got. They got the protection that the wolf gave the lamb, if you know what that means.

X Q. 464. What kind of protection was intended, that is what I am after?

A. It was intended that John Means should have this power of attorney to sell stocks, and that we would arrange for a final adjustment about it after everything was closed out.

X Q. 465. Then all you know about it is what you learned from the children of John Means?

A. And from conversations I had with John Means on the steamboat.

X Q. 466. What was to be the final adjustment that you have referred to a number of times?

A. Oh, we were to get together and have an accounting of the amount of money Mr. John Means had realized upon these securities, and a settlement with William Means, and a final settlement with regard to his interest in the estate. What was to be done exactly at the final accounting I could not tell you.

X Q. 467. What was said about it?

A. What would be done, I could not tell you.

X Q. 568. There was nothing said upon that subject, was there?

A. We were to have another arrangement after the storm was over.

X Q. 469. Just tell what that arrangement was?

A. We were to meet and discuss that and talk it over.

X Q. 470. Is that as definitely as you can state?

A. Why, we were to ascertain what was William Means' share in the estate.

X Q. 471. Well, then what?

A. Well, then we expected it would be paid over to him, that was all.

X Q. 472. Paid over to him?

A. Yes, sir.

X Q. 473. Then you did not understand that he was getting anything from the estate, did you, from Thomas W. Means?

A. Oh, I could not say.

X Q. 474. Well, you had some understanding on that subject; what did you understand?

316 A. We understood that the estate had let William Means have some money.

X Q. 475. You thought that Thomas W. Means had let him have some money?

A. Yes, sir; we did think that.

X Q. 476. You did not think that he got any of that $125,000 that Thomas W. Means let him have?

A. That is what we proposed to investigate when we would have our final adjustment of William Means' relation to the estate.

X Q. 477. Who proposed that?

A. William Means.

X Q. 478. To whom?

A. Why, to John Means, of course.

X Q. 479. Eh?

A. To John Means.

X Q. 480. When?

A. You have read the correspondence there.

X Q. 481. When and where?

A. How do you mean?

X Q. 482. When and where did he make that proposition?

A. I was talking about the conversations and the talk we had to arrange about these securities.

X Q. 483. What time?

A. Well, mainly the conversation took place between William Means and myself, and my information is what a client gives a lawyer upon that point.

X Q. 484. I asked you when and where and who was present; answer those questions?

A. When and where and in whose presence; what do you mean?

X Q. 485. The conversations to which you have referred?

A. About what?

X Q. 486. About those adjustments?

A. Most of this business was done by correspondence, and not much by talk.

X Q. 487. That is just what I am getting at. Was there anything in that respect that made this impression and gave you this understanding except what grew out of the correspondence?

A. Well, all my information in reference to this scheme was started from information from John Means, as I told you, and after that I saw John Means frequently, and talked to him after that steamboat conversation.

317 X Q. 488. Did you have any talk with him at all on the subject?

A. After the steamboat conversation I never saw John Means very frequently about that.

X Q. 489. I asked you if you ever talked with him at all.

A. Upon what conversation?

X Q. 490. Upon this matter of adjustment.

A. It was a subject that we could not talk about, this matter of adjustment. He understood it and I understood it.

X Q. 491. I asked you if you ever had conversations with John Means after the steamboat talk about this adjustment matter to which you have testified.

A. I never saw John Means much to have any conversation with him after that steamboat trip.

X Q. 492. I am not asking you why you did not. I am asking if, in point of fact, you did have such a conversation after the steamboat trip.

A. I don't remember of seeing him much after the steamboat trip or having any conversation with him.

X Q. 493. So, then, in fact, all this matter of adjustment that you have referred to grows out of the statements made in the correspondence between John Means and William Means?

A. It grows out of the statements and a conversation or arrangement with John Means upon the steamboat; a conversation I had with my client as to his information and knowledge, and the constant correspondence between William Means and John Means.

X Q. 494. Those are the only sources?

A. Those are the three sources of information that I now recall.

X Q. 495. Now, you have stated that you had conversations with William Means on that matter. Did he refer to any such arrangement for the final adjustment, etc., made between him and John Means in any conversation; if so, in what conversation did he refer to it, and when and where?

A. Oh, yes, he referred to that matter often, and Mr. William Means spoke to me about that frequently and about conversations and talks that he had with John Means.

X Q. 496. When did he have them and where?

A. That I don't remember. I don't remember whether he told me the time or the place. Whatever conversations he had took place after all these securities were turned over.

318 X Q. 497. Do you mean down on Wednesday; let me understand you. After the securities you have mentioned had been turned over here it took place after that?

A. Of course, it took place after the Wednesday that the securities were turned over from Sanders. Most of the conversations took place after that.

X Q. 498. Didn't it all take place after that?

A. No. William Means understood there was to be a final adjustment before Henry Hanna came up there.

X Q. 499. When you speak of adjustment what do you mean?

A. Why, I have explained that two or three times, as near as I can.

X Q. 500. Just give it briefly and in substance.

A. I have told you that we wanted to find out just what had been realized upon these securities and the anticipating share of William Means in the estate and have them paid over to him.

X Q. 501. Then he was to get the proceeds of the securities himself and to get his entire interest in the estate without any diminution on account of what had been paid for him in any direction, was he?

A. We did not know what John Means had done with the securities and we wanted to find out, and after that we found out then we would decide that matter.

X Q. 502. I will call your attention, Mr. Williams, to the first meeting in Ashland, when you and others, Mr. Hager and Mr. Cook Means, and at any rate, part of the time Mr. Adams—had some talk about this $136,000 receipt and the $26,000 receipt. State briefly and in substance just what took place at that first meeting, as nearly as you can state it.

A. Well, Mr. Baker was there. We had executed deeds of trust or a deed of trust to the children before that time, and they were pressing us for settlement, and the question came up as to whether we would sign that receipt, or carry out this settlement on the children. Baker and I went in there and then this question came up about the $26,000, and Cook Means spoke up before that was signed and said: "I represent my father and I represent Margaret Means. They do not want any money that they ever individually let William Means have, and then I asked him if he would turn it over to us and execute a receipt for $26,000, like we were to execute a receipt for $136,000, and Mr. Hager was present and agreed to do it, and the receipts were executed, and then the matter of payment came up between Cook and I, and I did not know then
319 whether it was convenient to pay it at once and it was agreed between Cook and I that it was to be paid in installments." That was the substance of it, and that he was to get $26,000, and we went away feeling sure that we were to get this $26,000 as sure as anything today, and we were sure to get that much out of it at that time, and further along we would see about the balance.

X Q. 503. Now, that was all that took place at the first meeting—the substance of it—was it?

A. It is the substance of it. There may have been other things that I do not recollect, but that is what my attention was called to.

X Q. 504. You have spoken about a balance. What did you mean when you say that?

A. We did not regard that as the final settlement either.

X Q. 505. Now, then, catch my point. I am asking you about what balance you referred to in your last answer.

A. The balance coming to William Means from the estate.

X Q. 506. Well, what balance was that, according to your understanding?

A. You understand we did not add up these figures, Mr. Anderson; we had nothing to do with that.

X Q. 507. I understand that, but you have something in your mind when you use the word balance. What does it refer to?

A. What was coming to Mr. Means afterwards.

X Q. 508. After what?

A. After this affair—anything that was coming to him, we wanted it.

X Q. 509. After what affair?

A. These receipts.

X Q. 510. In other words, any balance from the $136,000 and the $26,000?

A. No, the $136,000 we were still carrying on the same as we carried on these other sums. That was no final adjustment.

X Q. 511. In what sense were you carrying that on?

A. As I have told you nearly a dozen times, that we were putting it in shape, so that neither the family of William Means, including the children or the creditors could get it.

X Q. 512. The $136,000?

A. Yes, sir, the $136,000, and for doing that, signing those receipts, they were to give us this $26,000.

320 X Q. 513. Did you give the information to the attorneys who prepared the bill in this case on which they prepared it in that respect or from whom did it come?

A. Why, I came up to your office one day and I told you that those executors ought to pay that $26,000 and you told me that they may not have the same understanding as to time it was drawn out.

X Q. 514. You got a copy from me that day and sent it to William Means?

A. I might be mistaken about dates.

X Q. 515. Did you give the information to the attorneys who prepared the bill in this case on which they prepared it in that respect or from whom did it come?

(Witness is advised by his counsel that he need not answer the question, as it is a question between himself and his counsel.)

A. Give the information; what do you mean? Did I give information to you or to Mr. Maxwell?

X Q. 516. To your counsel in this case upon which the bill in this case was drafted.

A. I do not recollect about that. You can call them on the stand and they can testify. Probably they know more about it than I do—that branch of it.

X Q. 517. Did you advise them at any time that the real transaction at the time the receipt was signed was simply a fraud upon the creditors of William Means and his family as to the $136,000; if so, when?

Objected to.

A. I do not remember of using your language to them.

X Q. 518. In effect the substance of it?

Mr. GLIDDEN: When do you mean?

Mr. ANDERSON: I am asking when, if he did?

A. I cannot recollect what I told them about it at that time.

X Q. 519. Was it in fact a fraud—the signing of that receipt at the time?

A. I have answered that question three or four times, Mr. Anderson. That is a legal conclusion and I have stated the facts.

X Q. 520. You are a lawyer and understand what I mean by the question.

A. I am not a court and cannot decide and pass upon that question. I have told you the facts in this case and it is for the court to decide about that and not for me.

321 X Q. 521. Didn't you understand that if that receipt was signed as a sham to keep the creditors of William Means from receiving that $136,000, or to keep his wife and children from getting any just claim that they may have had against him, that it was a fraud against the creditors and the family?

Mr. GLIDDEN: Witness is advised not to answer that question or to enter into any discussion of that question with the counsel on the other side.

A. I have stated the facts and I do not propose to state a conclusion of law unless compelled to.

— Q. 522. Well, now, then, in point of fact, Mr. Williams, did you say at that time that $136,000 receipt was signed that you did not consider it a real transaction but considered it a sham?

Objected to.

A. I will make the same answer to that. I will state the facts.

X Q. 523. Now state the facts.

A. I have stated them.

X Q. 524. What was to become of the $136,000?

Objected to, as there was no $136,000.

A. That was a matter to be determined afterwards, when we came into the final settlement and adjustment.

X Q. 525. What was said on the subject of determination afterwards, and final settlement, at that time?

A. There wasn't very much said about that there.

X Q. 526. What was said?

A. We didn't say much, Mr. Anderson. I have told you it was only on those occasions. We did not talk much.

X Q. 527. If there was not very much said, it is easier to state it.

A. It was on one of those occasions when there was not much said; there was a good deal understood.

X Q. 528. There was very little said on the subject?

A. Not much said about it.

X Q. —. Let's have that little.

A. One thing that was said, that you were to pay that $26,000, and you never paid that over very fast.

X Q. 529. What else?

A. I have repeated the substance of it. You have asked me two or three times and I have repeated it and gone over it and you have repeated it, and you have asked me it, it was not all in substance, and I have gone over it again.

X Q. 530. Was that all that was said, that they were to
322 pay him $26,000? Was there anything said about paying any part of the $136,000, or any part of it?

A. That was not final, as far as we went.

X Q. 531. Who said anything about it being final, or not being final?

A. Why, the transaction itself shows it was not final, and the mere signing of the receipt of $136,000 did not make it final.

X Q. 532. Why not?

A. Because it, as I said, is not a final adjustment of it.

X Q. 533. Didn't you know at that time that William Means received, or was to receive, the securities that had been obtained from the Metropolitan bank as collateral to those notes, and the notes along with them, and the $125,000 note and the other notes that he had executed?

A. You see, in this whole transaction, as I have told you that there was not much said about it, but a great deal thought and understood. There was talk about the securities.

X Q. 534. Who did the thinking and understanding?

A. All of us.

X Q. 535. Who were they?

A. All present at the meeting there.

X Q. 536. Here is a business transaction that I am trying to get at. Be kind enough to say what was said and done in that connection with reference to this $136,000.

A. Well, we were to sign that receipt for $136,000, turned over to them, and they were to sign the receipt for $26,000, and we were to get that amount of money and we took the two receipts and knew what was said and done and I have repeated that to you two or three times in answer to questions and beyond what I have repeated to you above there was nothing said.

X Q. 537. What I am anxious to know is what language was used by you or others at that meeting from which you got the understanding that that $136,000 receipt, etc., and all that was done with reference to that was not final.

A. Because we regarded it as a continuance of the same scheme which was originated upon that boat, to carry out the same scheme which was made when that first note was made to Thomas W. Means.

X Q. 538. What was said from which you got that as to its being their scheme?

A. I don't know that anything particular was said upon that last occasion.

X Q. 539. Was anything said upon it?

323 A. About what?

X Q. 540. About that being a continuation of the original scheme of fraud that you and John Means got up on the boat?

A. I don't think so much was said as was understood about it.

X Q. 541. There was nothing said but simply an understanding. Who had that understanding?

A. Why, all of us.

X Q. 542. How do you state that others had it besides yourself?

A. Well, we took it for granted that they knew what John Means had done before.

X Q. 543. In point of fact there was nothing said but that understanding of yours was based upon an assumption that they knew what John Means had done upon the boat?

A. That they were acquainted with all the transactions that had taken place before that.

X Q. 544. But not based upon any statement made there that day?

A. I do not remember any particular statements. If there were, I cannot now recall them.

X Q. 545. Did you know then or at any time prior to that date the aggregate amount of money that William Means had received after the failure of the Metropolitan bank through the instrumentality of John Means?

A. That was the trouble about this affair. We could not get the exact amount to make any settlement.

X Q. 546. Did you know approximately how much?

A. No. We did not know at that time. Mr. Baker nor myself took any part in the consultation of figures. The creditors were after us and the figure was put before us and we did not care whether it was $136,000 or $200,000. That did not bother us. We were satisfied that afterwards there would be a final adjustment and settlement and everything would be done properly.

X Q. 547. I am asking you, Mr. Williams, if you knew approximately the aggregate amount that William Means had received through the instrumentality of John Means from all sources, whether from John Means or others, for which he had executed promissory notes?

Objected to on the ground that there is no testimony showing that William Means had anything beyond a very small amount.

A. Now, to what time do you refer, are you speaking with reference to this meeting about the $136,000?

324 X Q. 548. At the time that that $136,000 receipt was signed, did you know then the aggregate amount, or approximately so, of all moneys received by William Means or paid for him or his account by John Means or through his instrumentality?

A. That is what I want to get at and get rid of this kind of annoyance and badgering. If we were making a final settlement there we would have taken part in making up these figures. Mr. Means was governed by our advice and we took no part in this figuring and we did not know what the computation was, but simply

what the amount was and if it was to be a final settlement we certainly would have looked into that. I don't know who made the computation. The computation was made in the absence of Mr. Baker and myself. We were there for a short time. We did not care about the figures. We concluded that they would do what was right and proper afterwards.

X Q. 549. When was that computation made, do you know?

A. No, I do not. The only thing I know about the making was that Cook Means figured a little while but he could not make that computation. It was impossible for him to do that. He could not have figured up that $136,000 at that time.

X Q. 550. Do you mean the last meeting, where the receipt was signed?

A. I am not so sure about that. It was where the contract was signed about payment of $26,000 and Mr. Cook Means figured up $26,000.

X Q. 551. I did not ask about those things. I am asking if you knew approximately the aggregate amount of all moneys paid to William Means or upon his account or for him by John Means or through his instrumentality at the time that receipt was signed?

Objected to because it is an assumption that all payments that were made on account of Williams were made through the instrumentality of John Means, when it was shown that large payments have been made by others than John Means.

A. The only way I can answer that is that I knew that John Means had advanced money or let William Means have money and we knew that Margaret Means had, and we knew that Mrs. Adams had and we knew that the estate had, but the precise amounts we did not know at that time and were waiting until further along to ascertain that and we accepted the computation that
325 Cook made as the $26,000 and we took his word and figures for it.

X Q. 552. Now, Mr. Williams, I am asking you if you knew approximately how much John Means himself had paid, or how much had been paid through his instrumentality out of his own funds or others—I don't care where it came from?

A. No, I do not know the exact amount. I saw Cook's figures.

X Q. 553. I did not ask you about the exact amount.

A. I could not approximate the amount.

X Q. 554. What did you suppose at that time was the amount?

Objected to.

A. I had no supposition about it. That question was not coming up. We were not considering that fact.

X Q. 555. What were you considering?

A. I have told you there the whole transaction. If you will ask for facts I will try to give them.

Mr. GLIDDEN: You were considering the matter of getting that $26,000, weren't you?

A. Very largely—which we did not get.

By Mr. ANDERSON:

X Q. 556. Weren't you aware at that first meeting that the administrators with the will annexed of Thomas W. Means claimed to hold certain promissory notes on which payments had been made and that the balance, the aggregate balance upon those notes was $136,000 and some odd hundred including interests?

A. I don't recollect that the other showed those notes to either Baker or myself or that we knew the amount. That is the best answer I can give.

X Q. 557. Now, Mr. Williams, didn't you understand that the administrators were claiming that there was a balance due the estate of Thomas W. Means, interest and all, aggregating $136,000 upon certain promissory notes that the estate held against William Means?

A. There was no claim or statement of that kind to us. Upon the other hand it turns out here now that Margaret Means advanced $52,000 of the Labrot Trust—something that I did not know at that time. Another item. Six or seven thousand dollars you charge upon the bribe money. We knew nothing about it at that time.

X Q. 558. Who termed any money "bribe money"?

A. You will find it mentioned here in the testimony, and questions about it—that money that McConville had.

X Q. 559. How much is that—$6,000 you say?

326 A. I don't remember the amount. All these things were not submitted to us. We did not have the details of that transaction so we could make any final settlement at all.

X Q. 560. What I want to know is, weren't you aware at that time that the administrators were claiming that there was a balance of $136,000 due the estate of Thomas W. Means on certain promissory notes that the estate held against William Means and that they were asking to have paid?

A. No, I was not aware of that. You might as well get an emphatic answer to that effect. That was in the beginning of this time. I don't know—I guess the administrators were qualified. This was in 1890, and they were qualified and it was difficult to get at the accounts between John Means and the administrators and Margaret Means and the administrators, and find out what belonged to one and what belonged to the other; it was almost impossible.

X Q. 561. What difficulty do you refer to now?

A. Why, I refer to the exact amounts. Why, take this case. He started in at sixteen or eighteen thousand dollars and started to figuring and got up to twenty-six thousand dollars. That shows the uncertainty about it.

Mr. WHITAKER: Can't you screw it up?

A. We say if Margaret Means paid $52,000, why should we sign a receipt for $136,000?

X Q. 562. Isn't it a fact that you did not know that Margaret Means had paid $50,000 and somebody else some other sums? I am asking you if you did not in fact at that time understand

that they were claiming a balance due the estate upon notes that the estate held?

A. We did not know who held the notes and there was no statement of that sort made by the executors that I can now recall, and the notes were not produced either to me or to Mr. Baker.

X Q. 563. When did you first read the receipt that was given?

A. Which, the $136,000?

X Q. 564. Yes.

A. I don't remember unless it was at the house. If it was signed at the house, we read it there.

X Q. 565. You did read it before it was signed?

A. I have no distinct recollection about that. Mr. Baker was there then acting as the leading counsel at the house.

327 X Q. 566. For whom?

A. I think he was attorney for William Means at the time. That is, we supposed he was.

X Q. 567. What do you suppose now?

A. I have never heard anything to the contrary—know nothing to the contrary.

X Q. 568. Did you have that receipt? Was that receipt submitted to you before it was signed?

A. I do not recollect of anybody handing that receipt over to me.

X Q. 569. Will you say you did not read it?

A. No, I will not say I did not read it.

X Q. 570. Do you know whether Mr. Baker read it?

A. No, sir; or whether it was read to him.

A. I won't state whether it was read to Mr. Baker.

X Q. 571. Do you know whether Mr. William Means read it or whether it was read to him?

A. I am satisfied he read it over at that time or afterwards. I do not know when. I do not recall that particular fact

X Q. 572. Do you know who wrote it?

A. No.

X Q. 573. Do you know whether William Means wrote it or not?

A. My impression is that Hager wrote this receipt, but I cannot tell you without the document, about a thing that happened years ago and unless you show it, I do not want to testify about it.

X Q. 574. Do you know, in point of fact, in whose handwriting that $136,000 receipt was?

A. I don't know. My impression was that Hager wrote the receipts but I cannot state that positively. That is, I mean the original.

X Q. 575. $136,000 receipt?

A. $136,000 receipt. I would not state that positively. Unless you let me see the receipt I cannot state who wrote or did not write a receipt over three years ago.

X Q. 576. That was a matter of considerable importance?

A. Well, I can't tell you.

X Q. 577. Now, Mr. Williams, the $26,000 receipt that was signed; whose handwriting was that in, if you know?

A. I cannot state positively in whose handwriting that was, the transaction having been so many years ago, and as a lawyer having receipts and documents all the time, I will not testify positively to any handwriting on a receipt unless you produce it to me.

328 X Q. 578. I am not going to produce it nor ask you to testify positively. What is your best recollection and impression, if you have any, independent of receipts?

A. I told you that originally my impression was that Hager wrote up the original $26,000 receipt, and the $136,000 receipt, I cannot tell you who wrote that. I cannot tell you who wrote a document and I don't pretend to do that, and I won't.

X Q. 579. Can you say whether William Means wrote that?

A. I can't say as to that. If he did, or if he did not, you can produce the receipt very easily and settle it. I cannot tell you from recollection.

X Q. 580. You said something in your examination-in-chief about the signing of these two receipts as being one transaction?

A. Yes, sir.

X Q. 581. Was there any discussion at that time, or anything of an interview with reference to the signing of them, as to whether they were one transaction or not, in your presence?

A. Why, the receipts were signed at the same time and turned over to the administrators as the result of the conference we had had and one was part of the conference as much as the other. That is all I can say. I do not remember the word "transaction" being used.

X Q. 582. Did the two receipts bear the same date on their face?

A. We agreed—now, are you talking about the $26,000 or the three notes?

X Q. 583. The original?

A. Well, what I recollect about the matter and the agreement about the two notes was, we made the agreement in the iron office—whatever office it was—and the receipts were made in pursuance of that agreement, and they were made—both of them, those two receipts—at that time. I was informed that the $26,000 receipt was afterwards cut up into three receipts. William Means may have written me. I don't know about that.

X Q. 584. I asked you if the original $136,000 and the original $26,000 receipt bore the same date on their face?

A. Well, there had been some attempt to change some figure on one of those receipts, I notice. If you will give me that exact date of that receipt, I can answer your question better.

329 X Q. 585. Was there at any interview anything said prior to the signing of those receipts, whether they should bear the same date or not?

A. Why, yes. It was understood and agreed that those two receipts should bear the same date. It was there we agreed upon the two receipts.

X Q. 586. You have said yes. Now, what was said?

A. They started to figure on this $26,000 receipt. Cook started to figure off to one side, on a table, and figured up that amount, and we agreed that we would give them a receipt for $136,000 and they were to give receipt for $26,000. We were to get the $26,000. That was agreed to in the conversation and there might have been a difference of a day or two afterwards in the date of the receipts. There was some negligence in carrying out that agreement. Then afterwards, this $26,000 was, as I am informed, cut up into three receipts. I was not there at the time it was done.

X Q. 587. I wish you would pay close attention and understand my question. Was there anything said at either the first or second or any interview prior to the signing of this $26,000 receipt and the $136,000 receipt, as to whether they should bear the same date or not?

A. Why, yes; they were to bear the same date. There was no dispute upon that.

X Q. 588. Do you mean to say that there was something said upon that subject?

A. Yes. I spoke to Cook about signing that receipt of $26,000.

X Q. 589. What did you say about that?

A. The conversation took place and the amount he would give us. "We give you that $136,000 receipt and you give us $26,000." That is what it was, substantially, and nothing about a day or two afterwards.

X Q. 590. Was any conversation directed by any person at these interviews, or either of them, to the subject as to whether the two receipts should bear the same date or different dates?

A. They were to be executed that day before we went away—both of them—knowing that was the best we could get out of them.

X Q. 591. Was there anything said about the subject, as to what date they should bear?

A. They were to be executed that day.

X Q. 592. Did they say what they would date them, or not?

A. They said they will execute them and they did not say anything about what date was to be put on them. There was no doubt about that.

330 X Q. 593. Was there any question at that time or at any of those interviews, raised by anybody, or any discussion, upon the subject of whether the $26,000 transaction would stand in the event the creditors came at it afterwards?

A. Not a word of dissent—nothing to show the least sign of unwillingness to pay us the $26,000 up to the time that Baker and I left Ashland. If any disagreement came about that matter, it was after we went home. We left that transaction settled—us to get the $26,000 and they to get the $136,000 receipt; no doubt about that.

X Q. 594. Who was to get that?

A. That was to be turned over to William Means.

X Q. 595. By whom?

A. By whatever arrangements the executors made. I spoke to Cook and they were to make some arrangement, but what it was, I

do not know. Cook and I discussed the manner of the payment once.

X Q. 596. Who was to turn it over to William Means? That was a rather important transaction and you recollect something about it.

A. We were to get that. That was all there was about it.

X Q. 597. I asked, from whom?

A. I think the administrators; but if we did not, the brother and two sisters were to make some arrangement.

X Q. 598. Are you able to state definitely from whom you understood that money was to be paid, Mr. Williams?

A. Mr. Anderson, that matter was not discussed in detail. We were to get that money, and that was the reason, or one of the reasons, why we signed the receipt for $136,000.

X Q. 599. You certainly had some understanding about an important matter of $26,000 as to whom you were to look for the payment of it?

A. Well, we held the parties there responsible—as they were—as administrators or otherwise. We were to get that money; there was no doubt about it.

X Q. 600. Did you not discuss about when you would get it, or how?

A. Our conversation was not very long. It was a short conversation.

X Q. 601. I understood you to say that Mr. Means went so far as even to talk about paying that money?

331 A. Yes. It was to be paid in installments. I spoke to Cook Means about the manner of paying this $26,000 and whether it would be convenient to pay it all at once, and it was to be paid in installments.

X Q. 602. To whom was Cook to pay it?

A. To William Means.

X Q. 603. To William himself?

A. To him or his counsel. We did not discuss those little matters that you are going over now. If we had, we would have had to stay there two weeks. We were acting in good faith and did not go into all those details you are talking about, and we did not think it necessary.

X Q. 604. You were there making some arrangement with respect to this $26,000 transaction and the $136,000 transaction. How did it happen that you came away from there—you were the leading counsel there—and you cannot tell from whom you were to get that money?

A. Why, I told you we were to get it from the administrators and if they did not pay it over—I do not wish to bind Mrs. Adams with this matter, because that was a matter that came up afterwards so far as she was individually concerned—but so far as her amount was concerned, if she did not pay it, John Means and Margaret Means were to get it from the administrators and pay it over. That was our understanding, and as I told you, all those details you are talking about were not discussed. You are raising questions that never were put.

X Q. 605. Now, then, Mr. Williams, I understand you now to say that the arrangement, as you understood it when you came away after that receipt was signed—those receipts were signed—was, that if the money was not paid by the executors, it would be paid by them to John Means and Margaret Means, and then Margaret Means and John Means would pay it to William Means; is that what you say now?

A. All these details as to the manner of payment were not discussed. Mr. Cook Means was to arrange so that we would get that $26,000 either from the executors or through the brother and sister, with the exception of this $1,600, and if Mrs. Adams did not agree to let us have this $1,600, they were to make some other arrangement as to the $1,600.

X Q. 606. Then I understand you to say that Mr. Cook Means was the party who put himself in the attitude of the agent for William Means to secure that $26,000?

A. I have not said any such thing—nothing of that sort. Mr. Cook Means represented the executors along with Mr. Hager, and he represented his father, John Means, and Margaret Means.
332 Every other interest was represented there unless it was this individual interest of Mrs. Adams amounting to $1,600.

X Q. 607. You had no understanding, then, with Mr. Adams in regard to the $26,000 at all?

A. Yes. Mr. Hager was there representing the two executors and Mr. Cook Means was there as one of the executors. I knew that. These receipts were executed in the presence, and that agreement, and the matter was explained to Mr. Adams; I do not say that everything in detail was, but substantially, before the receipts were signed, I presume, and there was no contest or disagreement about this matter—not until after Baker and I went home and I do not know when Baker heard of it, whether after a week or ten days, that there was any objection to these receipts. Objection was made after we had left Ashland and gone home.

X Q. 608. I understand you to say, in substance and effect, that there was no understanding or arrangement between you parties representing William Means, or William Means himself, and Mr. Adams as one of the executors, except it was made by Mr. Hager as his attorney?

A. Why, no. I have not said that. I have told you that Mr. Hager, as counsel representing Mr. Adams, was present at the interview over this building and then we went down to the homestead and talked the matter over, and Mr. Adams was there at the time the receipts were signed. That is my recollection of it.

X Q. 609. Then did you have any conversation with Mr. Adams with reference to this understanding about the payment of this $26,000?

A. Why, the matter was talked over in the house. We did not talk it over so much as we did in the office, but Mr. Adams understood it.

X Q. 610. I am asking you if you said anything to him on the subject.

A. I do not remember any particular remark addressed to Mr. Adams, but his counsel was there.

X Q. 611. Did Mr. William Means say anything to you in his presence?

A. Mr. William Means was acting under advice of counsel and Mr. Adams was acting under the advice of Mr. Hager, his counsel.

X Q. 612. Are you able to say from your recollection that there was anything in that connection with reference to the payment of the $26,000 said to Mr. Adams by any person prior to the signing of those receipts?

333 A. I remember Mr. Hager claimed to represent Mr. Adams before we got through. You refresh my recollection.

X Q. 613. I am asking if there was anything said in Mr. Adams' presence by yourself or others?

A. I have a general recollection we talked over the matter when we went to the house and no particular concealed. There was nothing kept from Mr. Adams at all, and no desire to keep it.

X Q. 614. I am not intimating or implying a desire to keep anything from him, but I am asking if, from your knowledge, you can say there was a single word said upon that subject to Mr. Adams by any one?

A. Certainly. Mr. Adams could not sit down and half see or hear without hearing the conversation that took place at the house.

X Q. 615. Have you any recollection of Mr. Adams being present when that was done?

A. It is my best recollection that he was present when the receipts were signed. You are asking about matters that occurred a good many years ago. I am testifying to the best of my recollection.

X Q. 616. Admitting that he was present when the receipts were signed—I don't know—do you have a distinct recollection now of hearing anything said to him upon that subject, or to any one in his presence upon that subject, before the receipts were signed?

A. I do not remember of any particular statement, Mr. Anderson, but there was general talk and discussion about this matter that took place at the house.

X Q. 617. Had you not agreed upon these terms before you went to the house?

A. Well, we talked them over. You do not suppose we would sit down in the house and talk them all over again?

X Q. 618. Why did you go to the house?

A. I don't remember. I know we went to the house—Mr. Baker and I—and if I am not mistaken, we took supper there. I am not certain whether it was that time or not, and I am not swearing positively to Mr. Adams' presence. That is my best recollection, and I am swearing positively that Mr. Hager claimed to represent Mr. Means and Mr. Adams as executors.

X Q. 619. Now, Mr. Williams, I want to ask you if in point of fact it is not true that there was a change of date in that receipt from the 16th to the 18th—I mean, now, the receipt for $26,000,

334 while the $136,000 receipt was left the 16th for the very purpose of showing that the two transactions were different and independent transactions?

A. Not to my knowledge or recollection.

X Q. 620. Was there nothing said upon that subject in your presence?

A. I do not recollect anything said in my presence.

X Q. 621. If there was anything said in your presence you did not hear it?

A. I do not recollect anything. That is the best I can put it.

X Q. 622. Was there any discussion about making the two dates different for that very purpose of showing that the two transactions were independent?

A. I do not remember any such discussion. I know that the executors became dissatisfied and wanted the receipt handed back, but up to that——

X Q. 623. You know in point of fact that the date has been changed?

A. I know there is a scratch there but I do not know anything about any change. I know I never made the change.

X Q. 624. You know the date is not the 16th?

A. You cannot tell by the receipt whether it was the exact date. It speaks for itself.

X Q. 625. You know that the receipt says the 16th?

A. I cannot tell without the receipt.

X Q. 626. Now, do you know whether or not William Means, after that $136,000 receipt was signed, and after the first $26,000 receipt was signed, signed any other receipt for the $25,000 amount—I am just giving even figures—dated a date subsequent to the 16th?

A. I could not tell you what William Means did in my absence altogether, Mr. Anderson. The next I knew was that there were three receipts, one to John Means and one to Margaret Means and one to Mrs. Adams, is the information I got—as a matter of convenience. All I know is that William Means refused at the time I was there to take back those receipts—that is, the $26,000 receipts.

X Q. 627. If William Means ever did such a thing subsequent to the 16th the date of the signing of the $136,000 note you don't know anything about it and never have heard anything about it?

Objected to as immaterial what William Means did subsequently.

A. *628.* The only information I now recall about the receipt
335 was, that it was cut up into three receipts. That is the only information that I can recollect about it.

X Q. 629. When was it cut up?

A. I could not tell you about that. If you will produce the receipts I will let you know.

X Q. 630. I have not the receipts and I cannot produce them.

A. I was informed a short time afterwards. Whoever had got the receipt-, we have not got them.

X Q. 631. Were these three receipts for the same amount that you have referred to, given at the same time that the $136,000 was signed?

A. Not when I was present.

X Q. 632. Then you don't know anything at all about whether

William Means ever signed a $26,000 receipt or thereabout subsequent to the first receipt that is in evidence here?

A. For $26,000?

X Q. 633. Yes.

A. My recollection about the transaction—I may be mistaken about it—was that there was one receipt for $26,000 and some odd cents or originally made and executed and signed at the time of the $136,000, afterwards that receipt was cut up in three receipts. Now that is my recollection of it, but as to whether there was another receipt intervening, I don't know. The $26,000 execution of the other three I am not sure about that. I don't know much about that.

X Q. 634. Have you any impression about it whatever?

A. Not now any impression about it. If you will produce I might know something about it.

X Q. 635. Now, Mr. Williams, was there anything said at the time or prior to the time that the $26,000 receipt was signed that you knew about, whether it would be accepted by the administrators or not?

A. Why, there was no question about that. The administrators and executors—either one whatever you call them—cut these two receipts, you understand, and then Mr. Adams wanted to give Mr. Means back some receipt or receipts and I don't know what shape they were in, then. And then they were put in the envelope on the mantel and when I was called up for advice as to what to do whether to take back this receipt or receipts for $26,000 I advised William Means not to do it. That is the executors wanted to go back on *upon* that part of the contract, — they should be compelled to go back on the other part of the contract.

X Q. 636. What part?

336 A. The $136,000. If they wanted to take one up they should take them all up.

X Q. 637. What difference did it make about the $136,000 if it was a sham?

A. It made the difference that they wanted the receipt very badly for $26,000.

X Q. 638. They wanted it?

A. They wanted it.

X Q. 639. They did not expect it to be paid?

A. I cannot tell about the expectation. You have asked me about its expectations and you want to know what they thought about, but I can't say about that.

X Q. 640. From your standpoint what difference did it make? You thought it was a sham?

A. It made the difference that we were out our $26,000; that is all the difference it would make.

X Q. 641. Why, if it was not a real transaction and as to the $136,000, why would they be willing to pay $26,000 to get it?

A. I cannot tell all their reasons. They wanted it and badly.

X Q. 642. And insisted upon it?

A. They wanted it and insisted upon the $136,000 and we insisted upon the $26,000—one as much as the other.

X Q. 643. Then, why did you object to taking back the $26,000 receipt?

A. Because we did not want the receipt. We wanted the money.

X Q. 644. Now, then, isn't it the fact that up to the time that they made that objection there was an arrangement by which they were to get some kind of refunding bonds from Mr. John Means, Miss Margaret Means and Mrs. Adams, and that they declined to take those receipts—that $26,000 receipt as a finality until they all got such refunding bonds?

A. Mr. Anderson, there was nothing about a refunding bond—nothing of the kind in our conversation. If that was mentioned, it was an afterthought that came up.

X Q. 645. Wasn't there anything said about whether there was enough in the estate to pay $136,000 and $26,000?

A. Nothing until after we gave the $26,000 receipt.

X Q. 646. Nothing at all upon that subject?

A. Not that I recollect. We were to get the $26,000. We were pretty sure of that, that we were to get it.

X Q. 647. Isn't it the fact, that Mr. Cook Means and Mr.
337 Adams made the arrangement, but declined to take the $26,000 receipt and pay that amount to Margaret, John and Mrs. Adams unless John, Mrs. Adams and Margaret would give a refunding bond for those sums in the event the estate would not hold out so as to enable them to pay that much?

A. Nothing of that sort occurred or was suggested at the time of our agreement. If it did occur, it was after our agreement was made and Baker and I had gone home and closed the matter up.

X Q. 649. Now, when did you first see these securities that were turned over to William Means on or about the time of the $136,000 receipt was given, if you saw them at all?

(Objected to as an assumption that these securities were turned over upon the execution of that receipt, if they were turned over at all.)

A. These securities had nothing to do with this $26,000. They were not even mentioned at the conference or agreement that we made about the $26,000. No one said anything about securities. The agreement about the $26,000 was independent of the securities and had nothing to do with the securities, and were not mentioned by either Baker or myself at the time.

X Q. 650. Have you ever seen them since they were turned over?

A. I don't know of any securities that they turned over.

X Q. 651. Have you ever seen the notes upon which the administrators claimed to hold as belonging to the estate of Thomas W. Means at the time the $136,000 was signed?

A. Do you mean the $125,000?

X Q. 652. The note upon which this $136,000 balance was claimed.

A. $136,000 note?

X Q. 653. Have you ever seen the original notes?

A. I never saw any notes until this week, that I recollect of.

X Q. 654. You have seen some note this week?

A. Well, I don't know whether it was exactly this week. I have seen some notes referred to here.

X Q. 655. Have you ever seen the notes upon which the administrators claimed to hold as belonging to the estate of Thomas W. Means at the time the $136,000 receipt was signed?

A. I don't think I have seen them.

X Q. 656. You had one of them here yesterday?

338 A. It may be that these are the notes. I have no notes here. The only notes I have seen that I know of are the notes Mr. Glidden here produced.

X Q. 657. You testified here about $125,000 note yesterday?

A. Yes, I remember about that.

X Q. 658. When did you first see that?

A. I just saw that two or three days ago for the first time that I can recollect of.

X Q. 659. Have you ever seen any other notes?

A. I saw these notes which Mr. Glidden handed in here.

X Q. 660. Have you ever seen any others?

A. I can't recollect about that. I may have seen them, but I do not recollect. I can tell you that William Means never turned them over to me, if that is what you are driving at.

X Q. 661. That is what I am getting at.

A. I can answer that emphatically.

X Q. 662. Do you know how they came into Mr. Glidden's hands?

Counsel for complainant objects and instructs the witness to decline to answer.

A. Those notes I have seen only since this week. Maybe that will get you out of the point you were driving at.

X Q. 663. Did you get those notes directly from William Means or from Mr. Glidden?

Mr. GLIDDEN: You need not answer that question.

A. They have not been in my possession, and I have seen them only since the last two or three days. I don't remember the date.

X Q. 664. Did Mr. Glidden get them through you?

Mr. GLIDDEN: I object to his answering those questions as to how they were gotten.

X Q. 667. Have you not since this suit began forwarded to William Means the stenographer's transcript of the evidence or a portion of it in this case?

Mr. GLIDDEN: As your counsel I instruct you that you need not answer it.

A. I will not answer it when my counsel instructs me not to do it.

X Q. 668. Have you not, Mr. Williams, been in constant communication with Mr. Will. Means ever since this suit was begun, from time to time?

A. I sent him one hundred dollars the other day and
339 got the receipt for it. That was up at Ironton. I don't think I have had any correspondence with Mr. Means to amount to anything for quite a while, say a month or two.

X Q. 669. I mean from time to time.

A. How far back do you mean?

X Q. 670. Since this suit began.

A. I have had some correspondence since this suit began.

X Q. 671. Did it have reference to this suit in any respect?

Mr. GLIDDEN: Don't answer.

A. I have no objection to answering but when Mr. Glidden don't want me to answer I will not answer contrary to his advice.

X Q. 672. I will ask you if you did not send to Mr. Means a copy of the petition in the Greene county case upon which this suit is based and grows out of, before the decree was taken?

Mr. GLIDDEN: I advise you not to answer it.

A. I cannot answer when my counsel advises me not to do it. I refuse to answer any questions except what my counsel advises me to answer.

X Q. 688. What I am getting at is this, you are the confidential man and attorney of William Means in all his business, as I understand?

A. Yes, sir.

X Q. 689. Now, I am asking you if you have any recollection of when you first learned that there was some arrangement between William Means and his family that he should convey all his interests in his father's estate to trustees for their benefit, if you ever did learn anything of the kind?

A. The settlements were talked over by William Means and his children in his prosperous days.

X Q. 690. Tell me how soon.

A. I cannot go back to that, Mr. Anderson. It was before the bank broke.

X Q. 691. How long before?

A. Several years before that when William Means was perfectly solvent.

X Q. 692. What bank do you mean?

A. Metropolitan bank.

X Q. 693. Now, then, if you ever prepared any deed, as I believe you have stated you did, was it with reference to that arrangement that you knew of before the breaking of the bank?

A. Oh, they were talking about these trust matters and
340 settlements and insisted upon them and I drew the deed there and had William Means sign it and sent it to Gertrude Means, I think, before Thomas W. Means' death.

X Q. 694. What became of the deed?

A. I don't know what became of the deed, Mr. Anderson.
X Q. 695. Can't produce it?
A. No, can't produce it.
X Q. 696. Have you any idea of what became of it.
A. I cannot tell you.
X Q. 697. You have *you* any impression?
A. I will look down in my satchel. I think it may be there with some of my papers.
X Q. 698. You sent it to her. Did they accept it?

Objected to.

A. Substantially they did, my recollection of it is.
X Q. 699. What is substantially accepting anything?
A. I think that they wanted some formal changes.
X Q. 700. They did not accept it?
A. Oh, yes; they accepted it but they wanted some changed. That is the way the matter stood.
X Q. 701. What was the consideration in that deed?
A. I can't tell that unless I look at the deed.

Objected to.

X Q. 702. Why would you keep it after it was accepted?

Objected to.

A. I was trying to think whether it was returned or not for these changes or whether she kept it.

Counsel for complainant objects to this examination on the ground that the question of the validity of the trust had been adjudicated by the Greene county court of common pleas and that adjudication has never been appealed from or impeached or invalidated in any manner.

X Q. 703. Mr. Williams, I want to ask you whether any of the information and facts set out in the bill in this case was given to the counsel in this case by yourself?

Mr. GLIDDEN: That question, Mr. Williams need not answer by advice of his counsel.

X Q. 704. Did you give to the counsel in this case information upon which or any part of it, upon which that portion of the bill is based, charging fraud as to $136,000 receipt, and the agreement to pay the $26,000 to William Means by the executors?

341 NOTE.—Mr. Williams' counsel advises him that it is not necessary for him to answer that question, and he thereupon declines to answer.

X Q. 705. Mr. Williams, when did you first see William Means at your office after the $136,000 receipt was signed?
A. I cannot fix the date, Mr. Anderson.
X Q. 706. Was it a few hours or days or weeks or months?
A. It occurred to me that he remained there at Ashland some time. I cannot state how long.

X Q. 707. Well, sir, did he come to your office soon after?

A. I can't say certainly about that, Mr. Anderson.

X Q. 708. Did he not stay at your house for some time there, several weeks after that time?

A. Let's see; what date was that in 1890?

X Q. 709. October 16, 1890.

A. He was at my house just a day or two, and called to see me, and I cannot state whether it was a day or two before that. I will refresh my recollection, and let you know if you desire.

X Q. 710. Did he ever make any complaint that he had paid to the estate more than was coming to it at the time of that settlement?

Objected to as assuming that William Means had paid the estate something.

A. He never told me that he had paid the estate anything.

X Q. 711. Didn't he complain to you, or did he, that he had receipted for more than was due the estate, or owing to the estate?

A. I do not recollect of his complaining now, about anything except that they would not pay him the $26,000 that they had agreed to pay him, and he was mad and angry about that.

X Q. 712. Was that the first time that you saw him at your office?

Objected to.

A. No, I went up there at the time the receipts were written in the mill office that evening, and I think we took a walk, and he felt very much discouraged, and complained that he could not get that $26,000.

X Q. 713. Mr. Williams, when were those receipts lying on the mantel-piece to which you have referred?

342 A. I cannot fix the exact date. It was just a few days after the day that Baker and I were there.

X Q. 714. Did you ever write to Mr. Hager any letter with reference to this receipt, or the amount that was receipted for after it was receipted for?

A. I may have done so.

X Q. 715. Is that your signature (showing paper to witness)?

A. That is not my writing, sir.

X Q. 716. I did not ask you that. Is that your signature?

A. That resembles my signature, and this "Most truly yours, Evan F. Williams," is my signature, but that is not my writing above it.

X Q. 717. Whose handwriting is it?

A. I can't tell you, sir; I don't know.

X Q. 718. Whose do you suppose it is?

A. I can't tell you anything about that; it is not mine, sir. It is not my handwriting.

X Q. 719. Whose heading is that on there?

A. That letter is written upon my office paper, but that is not my handwriting. Let me see the balance of the letter.

X Q. 720. I will not show the letter just now. I want to ask some questions. Have you any idea as to whose writing that is?

A. No, sir; I can't tell you whose handwriting that is.

X Q. 721. Well, what do you think?

A. Well, I have told you that I cannot tell you, and I am not going to guess at it.

X Q. 722. Do you say that it is the handwriting of William Means?

A. I will not say that. I don't know whether it is the handwriting of William Means or not. It don't resemble his handwriting.

X Q. 723. I will ask you if you wrote a letter — Mr. Hager on or about October 18, 1890?

A. I don't recollect of it.

X Q. 724. In which you used the following language:

"My Dear Mr. Hager: William Means came to my office feeling much hurt and worried. He states that he has overpaid the estate some two thousand dollars ($2,000), and that the executors have neglected to collect certain certificates belonging to him amounting to eight hundred dollars or $1,200. He
343 wanted a small amount to pay for the necessaries of life at Yellow Springs. Mr. Baker and myself have advised him to pay certain bills until action is taken against him for alimony, so that the opposing counsel cannot claim an utter abandonment of his family. Of course he is not object aimed at in this litigation, which will finally result upon in a direct attack upon the estate. Not being able to obtain the money in Ashland, he came to me and it is at his service. Mr. Means is too proud to ask anything that don't belong to him, and notwithstanding all our efforts in his behalf, I doubt if he could be induced to accept anything else. Therefore, if he has claims upon the estate I do not think they should be ignored, and I have no doubt he is fully aware of his rights in that connection."

Did you write that to Mr. Hager?

A. That is not my handwriting.

X Q. 725. Didn't you sign a letter with that in it?

A. I don't think that I did.

X Q. 726. I will now ask you if that is not Mr. William Means' handwriting disguised?

A. I won't swear whether it is or not.

X Q. 727. I will ask you what is your best impression about it?

A. Well, I will say that it don't resemble his regular handwriting.

X Q. 728. It is his handwriting in disguise?

A. I have no right to say that it was his handwriting disguised. You submit it to some expert and find out. All I will say that I did not write that letter.

X Q. 729. Didn't you see William Means write that very letter?

A. No, sir; not as I recollect of.

X Q. 730. Didn't you dictate it?

A. No, sir; that is not my language.

X Q. 731. Didn't you hear it read?
A. Not that I can recall.
X Q. 732. Did you put your signature to it?
A. No, sir.
X Q. 733. At whose suggestion did you do that?
A. I may have done it.
X Q. 734. You have testified that that is your signature?
A. Yes, sir; and that "Most truly yours."
X Q. 735. At whose suggestion did you put that signature to that letter?
—. I cannot tell you that, Mr. Anderson.

344 By Mr. ANDERSON:

X Q. 737. I will ask you to look at the first page of that letter now, carefully, and say if you can refresh your memory in any respect?
A. In what respect do you mean?
X Q. 738. First as to the handwriting.
A. No. I cannot swear positively about the handwriting.
X Q. 739. Have you no recollection at all, now, of when that letter was written?
A. I have none whatever. Let me see the last page.
X Q. 740. No, I don't want to give you the last page. Have you any recollection at all of when that letter was written?
A. None whatever.
X Q. 741. Don't you recollect part of it being written?
A. No, I don't recollect part of it being written.
— Q. 742. Have you any impression of the matter at all?
A. I have no recollection at all or impression of that letter having been written.
X Q. 743. Do you recollect of having any impression about the facts stated on that first page?
A. No; I have said that once.
X Q. 744. About the facts?
A. Oh, about the facts. What particular facts do you mention?
X Q. 745. Just read over and see.
A. I know Mr. Means felt worried, if you refer to that.
X Q. 746. On or about the 18th of October, was he in your office and expressing any feeling of being hurt or worried because he supposed he had overpaid the estate or paid to the executors $2,000 more than was due them?

Objected to.

A. I have no recollection of his being in my office at that time, Mr. Anderson.
X Q. 747. Do you remember were Mr. Means was at the time he executed a certain mortgage to you and Mr. Baker, I believe, upon his interest in the homestead at Ashland?

Objected to.

A. No, I am not certain of that now.

345 X Q. 748. I am just asking you now and trying to refresh your recollection.

A. No, I don't remember anything about it.

X Q. 749. Can you tell where it was executed?

A. No, I cannot. If you can produce it I can tell you.

X Q. 750. I haven't got it. I am trying to refresh your memory by another fact. Wasn't Mr. Means at Ashland on or about the time or at the time that that mortgage was executed?

A. I cannot say.

X Q. 751. Did he execute a mortgage to you and Mr. Baker upon his interest in the real estate at Ashland?

Objected to.

A. Yes, he executed a mortgage to Charles W. Baker and also to myself.

X Q. 752. For how much?

Objected to as incompetent and irrelevant.

A. I can't recollect how much now, or give you the amounts. If you will get me the mortgage I can tell you of some memorandums.

X Q. 753. Wasn't that mortgage executed at Ironton in your office?

A. It may have been. I cannot tell you where it was executed.

X Q. 754. Do you have any recollection at all of the date?

A. No. I cannot tell you the date.

X Q. 755. Or the place?

A. I could not tell you the date of the mortgage now without some memorandum to refresh my memory.

X Q. 756. Well, I would like to know on or about the time that that mortgage was executed, didn't you see William Means in Ashland and also in Ironton or at either place?

Objected to.

A. I cannot say because I can't fix the date of the mortgage and I cannot recollect now.

X Q. 757. If it will assist your memory I will state that the mortgage is dated October 18th, 1890, the same date that this letter was signed.

A. Let me see the letter (letter shown to witness).

Objected to.

A. Now, what is your question?

X Q. 758. I asked you if William Means did not execute
346 that mortgage on or about the 18th of October in your office?

A. I cannot answer that question, Mr. Anderson, unless you produce the mortgage.

Q. 759. Here is the letter that was written and signed by you as you have stated.

Objected to on the ground that the witness has not stated that he

wrote the letter, but distinctly disaffirmed writing the letter, except that the signature looked like his handwriting.

A. Let's see the last page.

X Q. 760. This is the same letter.

A. Let's see the signature.

X Q. 761. There is the signature. Is that signature your handwriting?

A. It resembles my signature and I think it is my handwriting—the signature to the letter and the three words above the signature, "most truly yours," resemble my handwriting and I think it is my handwriting.

Mr. MAXWELL: Let us find out whose handwriting that is.

The WITNESS: I wish you would find out. I don't know myself, Mr. Anderson.

By Mr. ANDERSON:

X Q. 762. *Have* you any one in your office at that time to whom you dictated your correspondence?

A. Oh, yes. I don't write now one letter out of twenty.

X Q. 763. If you have any one, then, who was it?

A. Why, I always have one of my brothers in the office and I have another man by the name of Cal. Brooks.

X Q. 764. Is that first page in the handwriting of either one of them, and if so, which one?

A. I don't think that it is in the handwriting of either one of my brothers. I am often in the habit of signing my name in blank. I always sign my own name to a letter. It is an ordinary affair for me to sign my name to the letter before it is written. It is often done so, but that letter I have no recollection of.

X Q. 765. What I am trying to get at is this: When you signed your name to that letter, did you sign it in blank or after the letter was written?

A. I cannot say as to that. I have told you I have no recollection about that matter, that the language is not mine and
347 the handwriting is not mine and I cannot tell you anything more about that letter if you ask me all afternoon.

X Q. 766. Have you any recollection of signing on or about that date your name on any blank piece of paper for somebody to write a letter over?

A. I cannot tell whether I did or not.

X Q. 767. Tell us your best impression about it?

A. I can't say whether I did or not.

X Q. 768. Would you do such a thing as that?

A. I have often signed my name in blank on a paper for somebody to write a letter over it.

X Q. 769. For whom?

A. My brother. And often left my name there and told him how much space to leave for the letter.

X Q. 770. Who else did you have in the office?

A. I might do it with the clerks in the office.

X Q. 771. What clerk did you have in the office to do that?
A. I have had three since 1890. I have had Cal. Brooks.
X Q. 772. Did you do that with Cal. Brooks?
A. Yes, sir. Dictated a letter.
X Q. 773. Signed your name on a piece of paper and have him write a letter over it?
A. Yes, sir. That is a common occurrence and I have often signed it because I preferred to sign my own name and I would tell him to write a letter so-and-so.
X Q. 774. My question is this. Here is a letter that was written to Mr. Hager in our possession with your name signed to it. Now, the question is do you want the court to understand that you signed your name on a blank piece of paper to have some person that was in your office—and you don't know who he was—to write a letter over?
A. I don't say that I signed my name on that paper or whether it was before or after it was written. For I don't know.
X Q. 775. What do you think?
A. I have told you a dozen times that I can't tell you and I don't know.
X Q. 776. Now, let me ask you, Mr. Williams,—you have seen the first page of this letter and the second one and have examined a large portion of — and examined it carefully, have you not?
A. I have read it over.
X Q. 777. Now I will ask you whether it is not your belief that William Means wrote that?

Objected to.

348 A. I have no reason — that William Means wrote that letter.
X Q. 778. You have no reason to believe that William Means wrote that letter?
A. No, sir; I have no reason to believe it.
X Q. 779. You have correspondence with William Means ever since you were a boy, haven't you?
A. Not ever since I was a boy.
X Q. 780. Ever since you were twenty years old?
A. Yes, sir.
X Q. 781. And seen him write time and time again?
A. Yes, sir.
X Q. 782. You have received letters from him?
A. Yes, sir.
X Q. 783. And are you prepared to say whether that is Mr. Means' handwriting or not?
A. I do not. It does not resemble William Means's handwriting in any respect whatever.
X Q. 784. Has it none of the characteristics?
A. No, I do not see any of the characteristics.
X Q. 785. Look at the dollar-mark before the 800 and say what it is?

A. I don't think he would make such a bungling mark as that for a dollar-mark.

X Q. 786. Look at the date, October 18th, and say what you think?

A. No, I don't think that that resembles his handwriting, is all I can tell you.

X Q. 787. Have you ever seen Mr. McConville write?

A. Yes, sir; I have seen letters from McConville.

X Q. 788. Did you ever see him write a word in your life?

A. I have seen letters after he had written. I have seen his letters.

X Q. 789. Did you ever see him write in your life?

A. I think I have seen him write in his office.

X Q. 790. When?

A. Oh, I can't fix the time. It was along about the bank trouble.

X Q. 791. Did you know him?

A. By reputation before the bank closed.

X Q. 792. Did you ever receive letters from him?

A. I cannot tell you but I have letters written by him. I have been in his office and talked to him.

X Q. 793. How do you know that they were written by him?

A. I have seen his signature to them.

X Q. 794. How do you know?

349 A. I have been in his office and seen his handwriting and seen his letters.

X Q. 795. Yet you cannot swear positively to the endorsement being in his handwriting?

A. I do not swear positively that that is McConville's handwriting. I say to the best of my knowledge and information that it is his handwriting.

X Q. 796. Will you say that that is not William Means's handwriting?

A. To the best of my recollection I will.

X Q. 797. What?

A. That letter. To the best of my recollection I don't think that that resembles William Means's handwriting.

X Q. 798. Have you any recollection on the subject?

A. You are asking about the handwriting?

X Q. 799. Have you any recollection on the subject of the letter?

A. I don't know about the contents of that letter.

X Q. 800. Have you any recollection of any letter having been written in your office by William Means at that time?

A. I have no recollection of any letter having been written by William Means and signed by me.

X Q. 801. Have you any recollection of William Means writing to Mr. Hager a letter in your office whether signed by you or any one else?

A. No, sir, I don't.

X Q. 802. Have you any recollection at all or impression?

Objected to.

A. No, sir.

X Q. 803. I will ask you if you recollect about receiving any letter on or about the 18th of October, from Mr. Baker, the attorney?

Objected to.

A. No, I don't.

X Q. 804. Whether in fact you remember at any time receiving a letter from him in which this remark was substantially contained: "Mr. Baker and myself have advised him to pay certain bills—that is William Means I am referring to—until action is taken against him for alimony so that the opposing counsel cannot claim an utter abandonment of his family." Is that the fact?

A. Baker may have written, but I have no recollection of it.

350 X Q. 805. Did you give any such advice to William Means?

A. What advice?

X Q. 806. You and Mr. Baker?

A. What advice?

X Q. 807. To pay certain bills until action is taken against him for alimony, so that the opposing counsel cannot claim an utter abandonment of his family?

A. I do not recall; I cannot specify what certain bills I referred to in that letter.

X Q. 808. I didn't ask you that. I asked you if you gave such advice as that to William Means?

A. I don't understand what you are driving at. I don't know what certain bills I referred to in that letter, and I cannot tell you anything about it until you tell me what the certain *certain* bills are.

X Q. 809. I asked you if you gave that advice to Mr. Means about any bills whatever?

A. I don't remember advising about any particular bills now.

X Q. 810. Did you advise him about any bills?

A. I never advised him about paying any certain bills that I recall now.

X Q. 811. Or as to the advisability of paying them so that the opposing counsel could not claim an utter abandonment of his family?

A. I don't remember of any such advice in that case. We were trying to pay all the bills we could and to make our money stretch as far as we could.

X Q. 812. Now, you knew on or about the 18th of October and prior thereto for some time, didn't you know that William Means, or his wife, rather, was threatening to prosecute him or sue him for alimony?

A. In 1890?

X Q. 813. Yes, sir.

A. I knew that she had threatened suits for alimony, and there was talk of suits also in regard to the trust matter. I don't remember about all of them, Mr. Anderson.

Mr. ANDERSON: I move to strike out that matter in regard to the trust, as I did not ask for that.

X Q. 814. Now, Mr. Williams, confine your answers to the question of alimony. Did you know at that time, and for some time prior thereto, that Mrs. Means was threatening to bring suit for alimony or a suit against William Means for alimony?

A. That was in the fall of 1890.

351 X Q. 815. Yes. Referring now to the 18th of October, 1890?

A. No, I don't remember that she did in the fall of 1890, but I remember that she did in the spring of 1890, or along after the fall of 1889, is my recollection of when she threatened suits for alimony, if I got the dates right. Anyhow, it was before Thomas Means' death.

X Q. 816. Isn't it the fact that on or about the 18th of October, and for some time prior thereto, 1890, Mr. Glidden was employed as her attorney in an action to be brought and contemplated by her or threatened by her, for alimony against William Means, and that you knew that fact?

A. Now, what date?

X Q. 817. Take that letter and you will see the date that I refer to—October 18th, 1890. That is the first page of the letter.

A. Now, my recollection is, to state as nearly as I can about dates—it is hard to recollect dates—that in 1889, in the fall of 1889, Mrs. Means was threatening then, and the children both, suits, and also that in the spring things quieted down for a while, and think that they afterwards broke out again. That is my recollection of it.

X Q. 818. Was not William Means home in the fall of 1889?

A. In 1889, you say that was the time of the trial, wasn't it? Of course he was in Cincinnati in December, 1889.

X Q. 819. Well, now, Mr. Williams, didn't you know on or about the 18th of October, and didn't Mr. Baker know and advise you by letter that Mr. Glidden was wanting him, Mr. Baker, to agree to let everything remain in *statu quo*, which you considered he could not do—that is, Baker—and that he feared attachment forthwith; didn't he write you that in substance?

Objected to.

A. Mr. Baker never wrote such a letter as that, that I have any recollection of. If you will produce it I will tell you all about it.

X Q. 820. And did you not then advise Mr. Means or he advise you, or did he not know that in this letter you wrote Mr. Baker or in some letter on or about that date that if John Means, Mrs. Adams and Miss Means have not signed receipts and amounts properly credited as payments, you think that that should be tended to without delay?

352 Objected to upon the ground that the question purports to be read by counsel from a paper in his hand purporting to be a letter and the witness has asked to see the paper from which it is read and counsel refuses to permit him to see it. Thereupon counsel for witness advises him not to answer the question until

letter is shown him. Counsel for defendant says that he did not read from the letter and asks that the question be stricken out.

X Q. 821. On or about the 18th of October did you advise William Means that, if Mrs. Adams, John Means and Miss Margaret Means had not signed these receipts, they should be hurried up in the matter of signing the receipts?

A. Not that I recollect of. I don't recollect of advising Mr. Means on any particular in that regard.

X Q. 822. Didn't you have any particular conversation with him upon the subject on or about that date?

A. Not that I can now recall.

X Q. 823. I will ask you whether or not, on or about the 18th of October, 1890, in your office at Ironton or elsewhere, upon a sheet of paper headed with your letter-head, "Evan F. Williams, lawyer, corner Second and Center streets" in a letter dated Ironton, Ohio, October 18th, 1890, you wrote to John F. Hager addressing him as My dear Mr. Hager, as follows: "William Means came to my office feeling much hurt and worried. He states that he has overpaid the estate some two thousand ($2,000) dollars and that the executors have neglected to collect certain dividend- belonging to himself, amount- to eight hundred or twelve hundred dollars." What do you say as to that?

A. I have told you a dozen times I have not wrote the letter or any of its contents. What more can I tell you; that is what you asked me.

X Q. 824. Did you mail or cause to be mailed a letter with such a statement in it?

A. Not that I know of.

X Q. 825. Now, just look at that letter and state whether you mean to state you did not write that letter?

A. I am positive I never wrote that letter, gentlemen. I want to state absolutely and positively that I never wrote that letter.

X Q. 826. Is that your signature?

A. That is my signature and also above that the words "most truly yours." The letter above that I most positively state I never wrote and the language is not mine.

353 X Q. 827. And do you say that you never consciously adopted the language that I read from that letter?

A. I do. That letter has never been written by me, and I know my handwriting, and that is not my handwriting, and there is no resemblance between that handwriting and mine.

The letter above examined about is shown to witness and to opposing counsel, and marked for identification, Cincinnati, April 6th, 1893. B. Perin, sp. ex.

X Q. 828. Didn't you know, Mr. Williams, as a matter of fact, on October 18th, 1890, that Mr. Hager was the party who was to get the receipts from John Means and Margaret Mean- and Mary A. Adams?

A. I don't recall that. That was not the original agreement, and

I think that was the arrangement made after the original agreement, as I now recall it from what Mr. Means informs me.

X Q. 829. Didn't you know, as a matter of fact, at the time that Mr. Hager was acting as attorney for John Means and Mary A. Adams and Margaret Means?

A. No; I did not. I thought Colonel Moore was attorney for Margaret Means, exclusively, but I may have been mistaken about that.

X Q. 830. Didn't you have reason to suppose that Mr. Hager, at that time, was representing, as attorney, the others?

A. Yes; I believed Mr. Hager represented the executors at that time.

X Q. 831. And also John Means and Mary A. Adams?

A. I always thought that you were attorney for Mary A. Adams and Thomas Adams, and Colonel Moore was attorney for Margaret Means, and that Mr. Hager was counsel for the executors and Thomas Adams and Cook Means. That is my recollection of it, and what I am stating is merely a general recollection. I was not living in Ashland. Mr. Hager wrote that receipt, received of the executor that first receipt for $2,000, and I understood was acting as counsel for administrator when he wrote that receipt and was present.

X Q. 832. Didn't you hear or understand at that time that Mr. Hager was acting for all?

A. No; I relied upon Cook Means. Mr. Cook Means himself was the party who spoke up and said, "I represent my father's interest."

X Q. 833. As attorney I am now speaking?

A. I don't think Mr. Hager announced that fact at that
354 time, as I can recall. I relied upon Cook Means when he spoke up and said, "I represent John Means and Margaret Means," and relied upon his assertion that he did.

X Q. 834. Who had you in your office at that time, during that month of October, 1890, if any one, who you would entrust to write a letter of that importance above your signature in blank?

A. Well, I have not yet said whether I authorized anybody to write a letter of that importance. You are assuming what I have not answered.

X Q. 835. Last question repeated.

A. Well, that is assuming that I have entrusted some one to write a letter of that kind about the matter, and I cannot answer any such question as that. I have told you a dozen times I did not know anything about that letter.

X Q. 836. Did you have anybody in your office during the month of October, 1890, that you would entrust to write a letter of that kind and of that importance over your signature in blank, without having it first submitted to you before it was mailed?

Objected to.

A. Oh, I have had parties in my office who have written upon a blank signature of as much importance as that.

X Q. 837. Who were they, during that month of October?

A. I cannot recall particularly about that month who was in my

office. It was either one of three parties. It was either one of my two brothers or Cal. Brooks.

X Q. 838. Now, who is Cal. Brooks?

A. Oh, Cal. Brooks was a young man or boy that I entrusted with a good deal of my business.

X Q. 839. What nationality?

A. Cal. Brooks is son of Brooks, one of the old iron men back of Lawrence county.

X Q. 840. What does he do now, generally?

A. I don't know where he is now. He has left Ironton.

X Q. 841. What is his business?

A. At that time he was at the head of Mr. Wale's business and he was his financial man, and I found him very straight indeed in the large transactions.

X Q. 842. Now, then, is that in the handwriting of Cal. Brooks?

A. You have asked me that question three times. Now, what is the use of going over that again.

355 X Q. 843. Was Mr. Hager in your office during the month of October, 1890, or for three months prior or subsequent thereto?

A. He might have been; I don't say.

X Q. 844. You cannot answer as to those three or six months?

A. I don't recollect that Mr. Hager was in my office.

X Q. 845. Will you state to me whether that letter is in the handwriting of any one that was in your office as a clerk during the month of October, 1890, or any other time within the month before or after.?

A. It don't represent the handwriting of any clerk of mine in my office during that time, and I don't think that any of my clerks wrote it.

X Q. 846. Mr. Williams, you look at that letter and state to me whether or not it is a forgery.

A. That I cannot tell you, because I have told you that I did not know anything about the letter.

X Q. 847. You have no impression or opinion upon the subject, whether it is forgery or not?

A. I cannot say whether it is a forgery or not.

X Q. 848. What is your best impression upon the subject?

A. I have told you a dozen times that I didn't know anything about the letter. That is my best impression about the letter.

X Q. 849. You have an impression, have you not?

A. No, I have not. I won't say whether it was a forgery or not.

X Q. 850. I am not asking you to say positively, but simply what you think about it?

A. I don't know whether it is a forgery or not. That is as far as I will testify.

X Q. 851. Do you think it is a forgery?

A. I have answered you a dozen times; I do not care about going over it again.

Mr. GLIDDEN: Do not answer those questions, what you think.

A. The signature is not a forgery; the signature is mine.

X Q. 852. Mr. Williams, look at this paper and state what it is, if you have ever seen it before, and if so, when and where?

A. That is a duplicate of a paper which I think Isaac M. Jordan wrote up at Ashland—that is my recollection of it now. My recollection of it is that Mr. Jordan requested Mr. Means to write
356 it at the time, because his handwriting was better than Mr. Jordan's. It was in the hotel.

X Q. 853. What Mr. Means?

A. William Means. I refer now to the body of the paper. I don't know in whose handwriting this margin is. I say the body of the paper is in the handwriting of William Means. I am not so certain of the margin nor the signature of John F. Hager. It resembles his signature. I think that that is the signature of William Means. I think the contents of that paper is the same as the contents of the paper that has been introduced by plaintiff—about the same. The margin I am not certain about.

X Q. 854. Look at the margin, Mr. Williams, and state what that is.

Objected to because the paper is the best evidence (reading paper): "The matter of revocation contained in this notice and this notice and paper are hereby revoked." I did not know whose handwriting that is unless it is Mr. Hager's.

X Q. 855. Now, I will ask you if you knew of or advised William Means in the matter of making the revocation written in the margin of that paper?

A. I do not recollect that I did, Mr. Anderson.

X Q. 856. Do you recollect or say that you did not?

A. No, I won't say that.

X Q. 857. Do you know anything about it?

A. I do not recall it now.

X Q. 858. Don't you have any recollection of ever having known of that before?

A. That surprised me a little when it was shown to me. I have had a general recollection that that paper was never revoked. I may be mistaken, but I was going always upon the theory that that paper had never been revoked.

X Q. 859. Well, Mr. Williams, were you present when this revocation was made?

A. I don't recollect of ever being present.

X Q. 860. Haven't you any recollection whatever about that matter?

A. No, I have not. I have always thought that that paper had not been revoked and so informed my counsel, and that is my recollection. This margin now comes to me in the nature of a surprise. I suppose it is all right. I will contradict it. I don't recollect of being present. I know that if I was ever informed about it I have long since forgotten it.

357 X Q. 861. You recollect about the body of the paper, do you not?

A. The body I recollect.

X Q. 862. And you knew its contents before it was delivered to the executors by William Means?

A. I was present when Mr. Jordan wrote that.

X Q. 863. Were you present when it was served upon Thomas Adams or E. C. Means, or either of them?

A. I think I was in the court-house at Catlettsburg when it was served.

X. Q. 864. It was served in the court-house of Catlettsburg immediately upon their qualification as administrators?

A. I think that was about the time.

X Q. 865. Did you serve it yourself?

A. I may have received it.

X Q. 866. You knew its contents?

A. I think the paper was read over by Mr. Jordan at the hotel.

X Q. 867. Now, then, it refers to a certain paper dated January 16th, 1890; do you know what that paper was?

A. I can tell you the contents of the paper when you produce it—some paper that was signed—Williams Means was signing.

X Q. 868. Whatever the paper was it was submitted to you before it was delivered and you approved of it, didn't you?

A. No, I don't think I approved of that paper of January 16th, 1890. I think Jordan and I objected to that strongly, and I think that is why the contents of that paper were written.

X Q. 869. Was Jordan having anything to do with the matter in June, 1890?

A. No, but Jordan heard of the paper and objected to it.

X Q. 870. Objected to this paper of 1888?

A. No; this paper that that paper revokes.

X Q. 871. When was Jordan there—it was before the will was probated, wasn't it?

A. Shortly after the death of Thomas W. Means. I cannot fix it exactly.

X Q. 872. Don't you know that he came up on the occasion of the proving of the will in Catlettsburg?

A. I would think about that.

X Q. 873. And not before that?

A. I don't recollect of his coming before the proving of the will.

358 X Q. 874. That was after June, 1890?

A. I don't recollect the exact date. I don't think I was present when he wrote that paper because it come to me in the way of surprise. I refer to this revocation. I don't think I can be mistaken. I don't think I was present when Mr. Means revoked this paper.

X Q. 875. The fourth item in this revocation, the reasons given is, said paper was obtained from me in ignorance of important facts of my legal rights. What facts were those?

A. Mr. Means gave information to Mr. Isaac Jordan and I don't know what the details were.

X Q. 876. I understand from your examination-in-chief and also

from cross-examination so far, that you were the attorney of William Means, to whom all questions were finally submitted, no matter what other attorneys he had. Didn't he submit this paper to you and didn't you pass upon it?

A. Why, I consented that that should be done, but I did not attend to all the details of Mr. William Means' business.

X Q. 877. Didn't you converse and talk over with him about the facts that are mentioned in this fourth item?

A. I am satisfied that he gave the facts to Isaac Jordan, but I cannot recollect them now definitely.

X Q. 878. Have no recollection of it whatever?

A. I cannot state what they were.

X Q. 879. Well, what legal rights?

A. Well, the fact was that Means was up there and they would get him off to a corner where no lawyer was and they would get him into a hole and we would come up there and counsel to pull him out of the hole.

X Q. 880. Are you swearing what you know personally?

A. I am swearing to what I found when I went to Ashland.

X Q. 881. You are swearing to a fact? Did you know that personally?

A. Well, yes, pretty well.

X Q. 882. Well, what do you mean by pretty well?

A. That is the way that John done things there.

X Q. 883. What things?

A. You take that thing. We found that he had signed some paper in June, and as soon as Jordan went there we remonstrated against it.

X Q. 884. Did you know of that paper of June 16th before it was delivered?

A. I don't recall that paper of June 16th.

359 X Q. 885. Didn't you know of it all the time up to the time that this paper was delivered?

A. I do not remember that I did, Mr. Anderson; I recollect about Jordan, and about William signing that paper and certain papers without knowing what his legal rights were, and that is one of the reasons of the revocation.

X Q. 886. Now, what legal rights did he discover about this time that he put into this paper?

A. I cannot tell you what they were, but merely tell you the assertions.

X Q. 887. Have you any recollection or impression about that?

A. No; I have just this general idea about it that when he would come there counsel would get him to sign certain papers. I cannot recollect what the papers were.

X Q. 888. Do you know that from your own personal knowledge?

A. I know that from seeing and talking to William Means about what he was doing.

X Q. 889. Oh, you got it from William Means?

A. Yes; I had to find out what he did from him, I reckon.

Mr. ANDERSON: As it appears that a copy of this paper is already in evidence we do not offer this paper in evidence, except as to the margin, which is as follows: To E. C. Means and Thomas M. Adams, administrators, with will annexed, of Thomas W. Means. The matter of revocation contained in this notice and this notice-paper are hereby revoked.

October 4, 1890.

(Signed) WILLIAM MEANS.

JOHN F. HAGER, *Att.*

X Q. 890. Mr. Williams, you have testified here about a paper that Mr. Baker drew up in Cincinnati, which you said was in the nature or contained something like a trust. That is the substance of what I understand you to have said, ordering the payment to Mary A. Adams, Margaret Means, and John Means, in trust, or something of that kind. Do you know what became of those papers or of that paper?

A. No; I don't.

X Q. 891. Were they ever served or delivered to the executors?

A. I think they were.

360 X Q. 892. Did you see the paper that was served or delivered before it was so done? I believe you said you did?

A. Yes; I believe I saw that paper.

X Q. 893. Was it the same one that Mr. Baker prepared or had prepared?

A. I have no recollection to the contrary.

X Q. 894. Signed by William Means, wasn't it?

A. Yes; signed by William Means.

Mr. GLIDDEN: Did you see it before or after it was delivered?

A. I think I saw it after it was delivered.

Mr. ANDERSON: Where did you see it afterwards, if at all?

A. Well, I didn't say I saw the original papers afterwards. It was a copy probably that I saw afterwards.

X Q. 895. Have you the original or the copy?

A. No, sir; I think not.

X Q. 896. Have you the copy?

A. No, sir.

X Q. 897. Was it in the handwriting of William Means?

A. I cannot tell that unless you produce the paper.

X Q. 898. Was it typewritten?

A. I cannot tell unless you produe the paper. What is the use of trying to trip a person unless you produce the paper.

X Q. 899. Look at that paper and see if it was one of the papers?

A. Yes, sir; and I have told you here that that paper was signed because the money was to come to William Means after the executors had turned it over to William Means, or the executors had refused to pay over this $2,000 *over* in money to William Means, as agreed by him and the executors, and then the question come up how to get this money out of the hands of the executors. William Means advised this to be turned over to his brother and two sisters, and when they received this money from the executors they

would turn over this $26,000 in cash to him, and with that statement and assurance that was signed and sent to these parties.

X Q. 900. How was it delivered or sent to the executors or administrators, rather?

A. I can't recollect the particular way it was sent. Mr. Baker had charge of that.

Mr. GLIDDEN: Note and objection by counsel for complain-
361 ants upon two grounds—1st, that the respondents cannot enter into their substantive case upon cross-examination, and 2nd, the objection to this cause in their pleading they reply upon the paper of June, 1890, and not upon this assignment.

The WITNESS: And the discussion came up as to whether the word trustees should be placed in that paper. And it was thought best to leave it out because the executors would pay it over to this brother and two sisters by leaving it out, and William Means assured me and Mr. Baker there would be no trouble to get it from his brother and two sisters, and Baker assured him if he did not get the $26,000 he would rip up the old arrangement. It was a mere matter of confidence which William Means had in his brother and two sisters in the execution of those two papers.

Mr. ANDERSON: The answer as to all the matters except as to whether that is the paper and how it was signed, if at all, is not responsive to the question and therefore counsel for respondents would — to strike out that portion.

X Q. 901. Now you have volunteered in this last answer a good deal which was not called for, as to the question I put as to whether the word trustees would be put in there. Were you present when such question as that was raised?

A. I think I was present.

X Q. 902. Where were you?

A. I think I was at Baker's office at the time.

Q. 903. Well, was that question raised and discussed in the presence of the executors or either of them?

A. I don't think they were present.

X Q. 904. Were they notified at any time that such a question was raised or adopted?

A. Which do you mean, about the use of the word *of* trustee?

X Q. 905. As to putting the word trustee in there.

A. I don't know whether they were informed about that or not.

X Q. 906. Were they ever, so far as you are aware, notified that if they did not pay that money over to William Means that they would rip up the whole thing?

A. I cannot tell whether Mr. Means notified them afterwards or not.

X Q. 907. Did he notify them at the time?

A. No, he was in Cincinnati then, but he said that in regard to his sisters and one brother. That is the information that came from him.

X Q. 908. From William Means?

362 A. Yes. Why should we be anxious to turn that over to them unless we got some benefit of it.

X Q. 909. So that all the information you got was what you got from him?

A. Information we got from William Means at that meeting. Acting upon that information Mr. Baker got up the papers.

X Q. 910. Then you are not referring in that statement about what Mr. Baker said and about that arrangement for them to hold his money in trust to anything that took place between you and the executors at the time that the $136,000 receipt was signed?

A. No. I am referring to the fact that the information Means gave his counsel was that that was understood between him and his brother and two sisters.

X Q. 911. That is the basis then of what you have said as to how the money was to be paid—this $26,000 was to be paid to William Means?

A. Well, Means claimed he had made this arrangements before he saw Baker and I at the office—that he could get the money if his brother and two sisters got the money—and acting upon that information Baker drew up the papers.

X Q. 912. And that is the only ground upon which now you claim as a trustee to be entitled to receive that $26,000?

A. Oh, I cannot say it is the only ground. It is no telling how it was done.

X Q. 913. Well, if there was any other ground, what was it?

Objected to.

A. I do not recall any particular ground now.

X Q. 914. I will ask you if that is one of the papers prepared by Mr. Baker at the same time and signed by Mr. Means to which you referred in your testimony, that the money was to be held in trust.

Objected to by counsel for complainants upon the same ground as stated in the objection to the former paper.

A. That resembles one of the papers as near as I can identify it

Paper is marked for identification as follows
Cincinnatti, April 6th, 1893. B. Perin, sp. ex. (2).

The same objection is made to the identification of this paper as was made to the others.

363 X Q. 915. I will ask you if that is one of the papers drawn up by Mr. Baker in regard to the money in trust (producing a third paper regarding the same matter).

Paper is marked for identification, Cincinnati, April 6th, 1893, B. Perin, sp. ex. (3).

A. It resembles one of the papers. I would rather see the paper so as to compare it (paper handed to witness).

X Q. 916. What do you think about it?

A. I think it is the paper that I have identified.

X Q. 917. You saw the $26,000 receipt that Mr. Glidden put in evidence here I believe in connection with your testimony?

A. I saw either the original or a copy.

X Q. 918. I want to know when you first saw that receipt after the day it was signed?

A. That $26,000 receipt was signed the same day as the $136,000 receipt was signed down there at the house.

X Q. 919. I am referring to the $26,000 receipt of which a portion, if not all, was in the handwriting of Mr. Hager?

A. It was signed simultaneously with the $136,000 *and* they turned over to the executors the day that Mr. Baker and I went away and I cannot recall now when I saw it next—whether it was the next evening or the next hour.

X Q. 920. Give your impression about it and if you are wrong I may help your memory if I can.

A. I cannot tell when I saw that receipt.

X Q. 921. Didn't you see it at Ashland, on the mantel-piece at Mrs. Adams' house?

A. I don't think I saw it the next day—either the $26,000 itself or the $26,000 receipt cut into three receipts or receipts representing the $26,000 in an envelope when I got up to Ashland lying on the mantel-piece.

X Q. 922. You saw it then?

A. No, it was in an envelope and Means pointed to that envelope and said that the receipt or receipts are in that envelope for our $26,000 which the executors want to shove back on us, but I told him not to take that unless they would shove back the $26,000 receipt.

X Q. 923. Is that the one?

A. I could not identify that at this late day. It is impossible; and in fact I told him if they wanted to go back on that to repudiate the balance.

X Q. 924. You have reason to believe that it was in the
364 envelope on the mantel-piece at the time you referred to when they notified you that they would not except?

A. Either that or the three receipts.

X Q. 925. When after that did you next see it?

A. I cannot fix the date.

X Q. 926. Where did you see it next?

A. I could not tell you.

X Q. 927. Have you no idea?

A. I could not tell when I next saw it. It was a good time after that.

X Q. 928. You have some impression of where you saw it and under what circumstances?

A. I don't recollect of seeing it before this trial.

X Q. 929. From what source did you see it when you did see it; where did you see it?

A. I don't recollect of seeing it now unless you can give me some incident to refresh my recollection before it was produced here.

X —. 930. Who produced it?

A. I think counsel produced it.

X Q. 931. Which counsel?

A. I don't recollect now. You know.

X Q. 932. Didn't Mr. Glidden produce it?

A. I saw the receipt among the papers.

X Q. 933. Didn't Mr. Glidden produce that receipt the next time you saw it?

A. I saw it among the papers but I cannot fix the precise time of every little insignificant question you are asking.

X Q. 934. You saw it in Mr. Glidden's possession before you were sworn, did you not?

A. Now, do you mean lately?

X Q. 935. Since you came to Cincinnati to testify?

A. I saw a receipt but I won't say positively whether it was the original or a copy introduced here. I saw the original receipt or copy, but I am not certain which, during this examination. I have not got the receipt.

X Q. 936. Weren't you asked if the body of it was in Mr. Hager's handwriting and didn't you see that in the possession of Mr. Glidden before you were brought on to testify?

A. I cannot state positively that I did not see it.

X Q. 937. Didn't you see it in his possession the first time you saw it?

A. I won't swear to it unless you produce the paper. I could not tell what they were going to prove by it and I do not know anything about it.

Adjourned to Friday, April 7th, 1893, 10 o'clock a. m.

365 FRIDAY, *April* 7, 1893—10 o'clock a. m.

Cross-examination of E. WILLIAMS continued.

By Mr. ANDERSON:

X Q. 938. Did you see in Mr. Glidden's possession since you have been testifying, a receipt for $26,000 and something, partly in the handwriting of Mr. Hager, and dated October 18, 1890, or about that date?

A. I saw a paper here during this examination. It was difficult to tell the exact date by looking at the paper. I do not know where that paper is nor who has got it. I have not got it.

X Q. 939. Do you know who produced it here when you saw it?

A. If it was produced, as I think it was, during my examination-in-chief, Mr. Glidden produced it.

X Q. 940. Is that the first time you have seen that paper since the day it was made in Ashland?

A. My recollection is that that is the first time I saw it since this suit was brought.

X Q. 941. It is signed by William Means?

A. It is signed by William Means.

X Q. 942. And it purports to be a receipt given to the administrators of Thomas W. Means?

A. I think it is. I would rather see the paper. I do not want to testify to contents of a paper unless I see the paper. My recol-

lection is that that $26,000 was receipted in the same manner as the $136,000 except as to amounts, and at the same time, my recollection of it is—and place.

X Q. 943. It is one of the receipts that you understood to be in the envelope on the mantel-piece at Mrs. Adams', that you have referred to in your testimony?

A. Either that receipt or the three receipts, split in two—that receipt or all of them.

X Q. 944. Now, can you state when you saw it, if at all, after you saw it lying on the mantel-piece, or was told it was lying on the mantel-piece, before the commencement of this suit?

A. No, I cannot recall that fact now.

X Q. 945. It is not the fact that you did see it during that period?

A. I cannot tell you, Mr. Anderson. There were so many papers it is hard to tell.

X Q. 946. Give your best impression.

366 A. I cannot testify as to that. There are so many papers here it is hard to identify any paper I may have seen.

X Q. 947. Do you know in what manner Mr. Glidden got possession of it; from whom?

A. No, I do not.

X Q. 948. No idea about it?

A. Well, I do not know, Mr. Anderson. I am not going to testify guessing at things.

X Q. 949. What is your best impression about it?

A. I have told you that I don't know.

X Q. 950. I am asking for your impression.

A. I have no impression about it.

X Q. 951. After you saw this paper lying on the mantel—these receipts—lying on the mantel, or were told they were there, these papers that had been identified as prepared by Mr. Baker in his office in Cincinnati were prepared, were they not?

A. Yes, sir; prepared by Mr. Baker. Some papers were.

X Q. 952. They are dated about the 31st, I believe. (Produces paper.) There is the date, October 31, 1890. I want to know if the time you saw those papers on the mantel-piece was between the date of these papers that were prepared in Mr. Baker's office that have been identified and the 16th of October when the $136,000 was signed?

A. Have you got the three receipts?

X Q. 953. I haven't got them.

Q. I don't want to testify about papers without seeing the papers. I do not know about the dates.

X Q. 954. The time you saw these papers on the mantel-piece that I have referred to was between this date of the 16th of October, when the $136,000 receipt was signed, and the papers written by Baker?

A. I do not know what you are driving at.

X Q. 955. What I am driving at is this: Between this date and this 16th of October was the time you saw the paper on the mantel-piece?

A. The papers which Baker drew up—if that is what you want.

X Q. 956. Yes.

A. Were drawn up by Mr. Baker, I think, after those receipts were lying on the mantel-piece which we refuse to accept, but I would rather see the dates of the papers to be sure in those matters. It is hard to testify about dates of events three or five or six years ago.

X Q. 957. These papers that have been identified as pre-
367 pared by Mr. Baker are dated at Ashland, Ky., October 31, 1890, are they not?

A. The papers purport to be dated at Ashland, Ky., October 31, 1890.

X Q. 958. Now, Mr. Williams, you have stated in your examination heretofore, substantially, that the first meeting in Ashland with reference to the signing of this $136,000 receipt, or out of which grew this $136,000 receipt, was when Mr. Baker was there. Are you mistaken about that?

A. Why Mr. Baker was there when we made arrangements about the $136,000 and the $26,000 receipts.

X Q. 959. Do you remember of any other meeting or arrangements prior to that?

A. That was the main meeting. We fixed up those receipts when Baker came from Cincinnati. We met in a little place near the river. That is when that arrangement was fixed up.

X Q. 960. I understood you to describe two meetings when Mr. Baker was there. One near the river and the other out at the house. Out of those two meetings or in connection with them, it was decided to sign the $136,000 receipt. Now, I want to ask you did you not have a meeting with relation to that matter prior to the time when Mr. Baker was first there?

A. I do not recollect of any meeting. If there was, that did not amount to much. The final arrangement was made when Baker was there.

X Q. 961. Now, I may refresh your recollection. Did not you and Mr. William Means go to Ashland and see Mr. Hager, and Mr. Cook Means, and probably Mr. Adams—for I am not advised as to that—on or about the fourth of October, with reference to that matter?

A. That was the particular matter you was talking about yesterday, was it?

X Q. 962. I do not know what you refer to.

A. That is what I referred to in the close of the testimony. Now, I do not recollect of that meeting of October 4th, 1890.

X Q. 963. I will ask you if you were not present at a meeting prior to the time that Mr. Baker was there, when you saw Mr. Hager and that marginal revocation of the revocation was made that was referred to yesterday?

A. I do not recollect, Mr. Anderson, of being there; I may have been there. I do not recall it now.

X Q. 964. I understood you a moment ago to say that
368 there was a meeting that did not amount to much prior to the time Mr. Baker was there?

A. I said if there was a meeting there.

X Q. 965. What is your recollection about it?

A. I do not recollect. We had been to Ashland quite frequently, but my impression was that this was the meeting at which the receipts for the $136,000 and $26,000 were signed, when Baker was there. Now, to help you out and save questions, I do not recollect of being present when this marginal reference, or whatever it is there, was written on the side of that revocation of Isaac Jordan's. I do not recollect of being present. I may have been present. Now, that is the best way I can put it for you.

X Q. 966. Well, how did you happen to go to Ashland with reference to that matter; at whose suggestion did that meeting take place?

A. Now, I wish you would fix the date.

X Q. 967. The first meeting you have in your mind or have any recollection of concerning the negotiations as to the making of this $136,000 receipt—what took place at that time? What was the first meeting?

A. There may have been another meeting, but the only meeting I can recall, Mr. Anderson, is the meeting when Mr. Baker and I was there.

X Q. 968. How did that happen to come about?

A. Well, creditors got after us pretty hot and madam and the children were after us pretty hot and things were hot all around; that is about the size of it, and Baker said, "Blood is thicker than water."

(Mr. WHITAKER: We object to what Baker said and move to strike it out.)

X Q. 969. Weren't you, on or near October 4, 1890, in Ashland with Mr. William Means on one Saturday, and did you not then see Mr. Hager and Mr. Cook Means and have some talk about fixing up matters, and leave, promising to come back that night and make further papers and settlements?

A. That makes about a dozen times you have asked me that question of that October 4 meeting. I have told you that I do not recollect of being there.

X Q. 970. I was trying to help your memory, Mr. Williams, by referring to a date along in connection with the Saturday. Now I leave out the date and ask you if you remember being in Ashland one Saturday in October, 1890, when you met Mr. Hager and Mr. Cook Means and left for Ironton, stating you would come back
369 that night and execute papers of any kind, or matters or settlements?

Objected to.

A. I cannot fix the day any more than I could the day of the month.

Answer objected to as irrelevant.

X Q. 971. Do you remember any such circumstances?

A. I do not recall it now. I have answered that question nearly fifteen times.

X Q. 972. We are trying to refresh your memory.

A. I have told you I do not recollect being there on the 4th, but I may have been there. I do not recollect it now.

X Q. 973. That is the best answer you can give?

A. Yes. And you can continue all morning on that proposition unless there is something else to refresh my recollection.

X Q. 974. Then you have no recollection of leaving Ashland on a Saturday afternoon in October, 1890, promising to return during that evening or during that night?

A. Why, if I do not recollect being there on that date I certainly could not recollect of leaving there on that date.

X Q. 975. Then you say you do not recollect it?

A. I say I do not recollect it. That is the best I can put it, gentlemen. There were a great many meetings there and conversations and a great many papers and it is difficult to recall all the matters of so many years ago.

X Q. 976. Did you during those negotiations, prior to the signing of the $136,000 receipt, mention to Mr. Hager, Mr. Cook Means or Mr. Adams, or all of them together or any one of them in the presence of the others, that any interest of the children of William Means was about to be asserted or claimed as against the executors or William Means' estate?

A. Why, Mr. Hager knew it from that letter of October 20, which he says he received.

X Q. 977. Which one do you mean?

A. That letter you have been asking about and you produced here the other day.

X Q. 980. You state that they all knew. How did they all know?

A. Well, it was talked over of course. William Means
370 would come from Yellow Springs there to Ashland and was stopping at Ashland and made known all his family troubles to his people at Ashland.

X Q. 981. Were you present when he did so?

A. I don't remember of ever hearing it. He was intimate with his Ashland people at that time.

X Q. 982. You then cannot recall any particular statement made by you to any of these parties or made by William Means to any of these parties to that effect?

A. Not at the time the receipts were signed.

X Q. 983. Or before they were signed?

A. I cannot recollect of any conversation which I myself had.

X Q. 984. Or William Means had in your presence?

A. Not at the time the receipts were signed. I cannot remember all these talks and conversations. I have a general recollection of the facts that they knew all about it. They had a trouble up there; you remember that, don't you?

X Q. 985. No, I don't. I have been attorney for this family for a long while. I do not know of any trouble.

A. The children were up there and there was some trouble then and I do not care to go into all those questions.

X Q. 986. Do you refer to the time Miss Hattie was up there and she did not get into the house?

A. Yes, sir, there was some trouble then.

X Q. 987. Or she was in the house and Mrs. Means was not permitted?

A. I do not care to go into that affair. You seem to want to do it.

Mr. WHITAKER: I move to strike out all the questions and answers upon the subject of what he heard or said in regard to any difficulty that took place at Ashland between the relatives of William Means and his children at any time.

X Q. 988. Now, Mr. Williams, you have volunteered a statement that there was trouble at Ashland between Mr. William Means at Ashland and his children. Do you mean to state that or was it his wife?

A. I do not want to go into these domestic matters, Mr. Anderson.

Mr. WHITAKER: I wish to state, as his counsel, that he is not compelled to answer the question.

WITNESS: To go into these domestic matters——

Mr. ANDERSON: Why did you refer to them?

A. Because you brought it out in the question.

X Q. 989. Now, Mr. Williams, let's come down to the facts.

371 You know what I am asking. Do you mean to say that you had any personal knowledge of any statement made by yourself or William Means to these executors or either of them, or their attorneys, that there was any claim on the part of the children of William Means against the estate of Thomas W. Means?

A. I have answered that question about a dozen times also.

X Q. 990. That is the only answer you can give?

A. That is the only answer I can give to the question—no.

X Q. 991. Do you mean to say that you had any personal knowledge of any statement made by yourself or William Means to these executors or either of them or their attorneys that there was any claim on the part of the children of William Means against the estate of Thomas W. Means prior to the signed of the $136,000 receipt?

A. I cannot recall any particular conversation that I had myself. That is the best answer I can give you.

X Q. 992. I have asked about William Means.

A. William Means made a confidant of his brother and two sisters and told them about everything.

X Q. 993. In your presence?

A. Oh, I knew he did at that time.

X Q. 994. In your presence?

A. He talked with them in my presence.

X Q. 995. Now, then, did he tell the executors anything in your presence with reference to any claim on the part of these children against the estate of Thomas W. Means? Now, that is a plain question.

A. I have answered your question. If the stenographer will refer to it he will see it.

X Q. 996. I am referring to talk that they had?

A. I am sure that William Means told the executors and everybody about Ashland that had a right to know about the affairs at Yellow Springs, and that the madam and the children wanted a settlement of his interest in the estate.

X Q. 997. You are satisfied about that?

A. Well, yes.

X Q. 998. Did you hear any such statement to the executors or either of them?

A. I have answered that a half dozen times.

Mr. WHITAKER: I instruct you not to answer it.

Mr. ANDERSON: I am asking about what you heard William Means do. You have answered as to yourself before, but you have not covered him.

372 A. I told you that William Means had informed me that he told his relatives all about these matters.

X Q. 999. And that is the only ground of your statement that they had any knowledge on that subject?

A. It is one of the grounds.

X Q. 1000. Is that the only ground?

A. That is the only one that I now recall. I am fixing this down now at the last date there—the date of the last receipt. I recall another ground, in fact, since you have been examining me, that Mr. Whitaker was in Ashland after Thomas W. Means' death. That, I think, was in June, 1890, and was there insisting, I remember now, upon having the children's interest and Mrs. William Means' interest in the estate settled, and they knew Mr. Whitaker was at the hotel for that purpose. Now, there may have been other grounds. I cannot recall them all at once. The facts are that Mr. Glidden and Mr. Whitaker were insisting upon a settlement of William Means' interest in favor of the children and also that Mrs. Means should have her claim upon William Means' share in the estate settled.

X Q. 1001. Well, that is a very important matter. Mr. Whitaker was there at what time?

A. The only date I can recall was when Thomas W. Means was dead—just a day or two after.

X Q. 1002. Just a day or so?

A. Yes, sir.

X Q. 1003. Whom did you hear him talk to?

A. Why, I notified whoever was at the home then that Mr. Whitaker was at the hotel. They all knew it—whoever was in the house at the time and — a right to know it.

X Q. 1004. Just tell me whom you notified?

A. Why, I mentioned the facts just like a family matter.

X Q. 1005. To whom?

A. To Mr. Means there.

X Q. 1006. What did you mention?

A. That Mr. Whitaker was there.

X Q. 1007. To whom else besides?

—. ——.

X Q. 1008. To whom else besides William Means?

A. The other members of the family.

X Q. 1009. Who else?

A. I think Margaret Means was present. I think Mr. Adams was present.

X Q. 1010. What did you tell William Means on that subject in the presence of Mrs. Adams and Miss Margaret Means?

373 Question objected to as irrelevant and illegal.

A. I told him that Mr. Whitaker came up here to make some settlement in regard to these matters.

X Q. 1011. What matters?

A. These claims of his children.

X Q. 1012. What children?

A. William Means' children.

X Q. 1013. What claims?

A. These claims as to the share.

X Q. 1014. Did you say trustee claim?

A. I do not remember using those identical words.

X Q. 1015. Any words to that effect?

A. I stated briefly that he was there, and wished to see Mr. Means about the claims of his children and wife.

X Q. 1016. What claims of his children and wife?

A. I am telling you the language I used. If you want to know what the claims referred to, it will take some time to tell, but if you want to know, I will tell.

X Q. 1017. Just go ahead and tell. I want to know what you told, and what they said.

A. A long time before the death of Thomas W. Means, we had a meeting at Xenia, Ohio. John Little, Mr. Glidden, Mr. Whitaker, Mr. Means and myself were present to adjust the family claims. We there and then agreed that the expectancy in the estate of Thomas W. Means of William Means should be turned over to these children. That was the main conference we had about the matter up in Xenia, and William Means agreed to settle upon his children his expectancy in that estate. That contract was made in the presence of all us lawyers—and agreement and adjustment.

X Q. 1018. Was that in writing?

A. I cannot say whether it was put down in writing at that time but it afterwards was.

X Q. 1019. When?

A. It is difficult for me to fix the date, Mr. Anderson, but at any rate, before Thomas W. Means' death there were some papers executed and delivered.

X Q. 1020. By whom?

A. By William Means.

X Q. 1021. Who drew them?

A. I think Mr. Glidden, but I am not certain—Mr. Glidden o Mr. Whitaker.

X Q. 1022. Have you seen the papers since?

A. I do not recollect of ever having seen them after his death, now.

Mr. ANDERSON: Well, now, that is something I did not
374 ask for, Mr. Williams, and I move that it be stricken as not responsive to the question, and as not competent evidence in this matter.

X Q. 1023. Now, Mr. Williams, go back to my question, if you please, and answer me, what you told Mr. William Means in the presence of Mrs. Adams and Miss Margaret Means at the time that Mr. Whitaker was in Ashland when Thomas W. Means died?

Question objected to as irrelevant and incompetent.

A. Well there was some change that was wanted there in the papers about the settlement, and I spoke up in a short way, and said that Mr. Whitaker was there upon that business.

X Q. 1024. Tell me what you said.

A. Mr. Anderson, Mr. Thomas W. Means was dead there, and there was no general discussion. It was not a time to discuss business. He was lying in his coffin, and I just said the object of his being there. There was no length of conversation.

Objected to as illegal, incompetent and irrelevant.

This objection is made to this line of examination as fully as if repeated after every question.

X Q. 1025. Be kind enough and state the language you used, as nearly as you can.

Objected to for the same reason.

A. I cannot recall every conversation, and use the exact language at this date, but substantially I told you.

Objected to for the same reason.

X Q. 1026. You have not yet told me.

A. If you will be patient I will tell you.

X Q. 1027. I certainly do not like to ask the same question twenty times.

A. I don't think we can stop you.

X Q. 1828. Go on and state what you said.

A. I told them that Mr. Whitaker was here with reference to the claims of the children to the estate of Thomas W. Means. That is the substance.

X Q. 1029. Is that what you said to William Means in the presence of Miss Margaret Means and Mrs. Adams?

A. Yes.

X Q. 1030. And no other persons present?

A. There were other persons present.

X Q. 1031. Who was present besides?

375 A. I cannot say certainly that Mr. Adams was present, but I think there was a red-whiskered gentleman there named

Ellison, from Manchester. They all knew Whitaker was there, and there is no doubt about it.

X Q. 1032. They knew he was there?

A. Yes, sir; and his mission too.

X Q. 1033. You think Mr. Adams was there, and Mr. Ellison?

A. I think so, but it is impossible to recall who were present.

X Q. 1034. Mr. Robert Ellison, of Manchester, wasn't he?

A. I think that was the gentleman's name. I am not sure; my recollection — that they were present. I am not so positive about all who were there. There was quite a group when I announced to William Means that Mr. Whitaker was there.

X Q. 1035. Now, this statement that you made in the presence of Mrs. Adams and Miss Margaret Means is the only notice that you have any knowledge of prior to the signing of the $136,000 receipt being given in any way to any of the relatives in Ashland?

A. Oh, no. William Means told them all about it.

X Q. 1036. Now, I am talking about your personal knowledge?

A. I am telling you what I know. I have answered your other questions a dozen times before.

X Q. 1037. I am asking another question. That is the only personal knowledge you had of any notice of that character?

A. I don't know what you mean by personal knowledge. I have told you that William Means informed me that he had discussed that matter over with his relatives outside of what I know.

Mr. ANDERSON: I am not asking for that, and move that it be stricken out.

X Q. 1038. Mr. Williams, calling your attention to these exhibits that are copied of the various notes that were held by the executors, made by William Means to Thomas W. Means (Ex. 23), I will ask you to look at the note of August 20, 1888, and state what it was given for.

A. I cannot tell you now, Mr. Anderson, what the considerations of those notes were. I cannot tell you now.

X Q. 1039. Don't know the consideration of any of them?

376 A. I cannot recall any of those transactions. That is over five years ago.

X Q. 1040. A good while ago?

A. Yes, sir.

X Q. 1041. And you do not pretend to know what the consideration was for any of the notes that were given to Thomas W. Means by William Means after the failure of the Metropolitan bank, amounting in the aggregate to about $280,000 or more, except as to the $125,000 note?

A. Oh, I remember the $125,000 note and I remember that other notes were given, but I cannot recall particular transactions.

X Q. 1042. After William Means left Yellow Springs in '88, did you see him again until after all these notes were executed?

A. When in 1888 did he leave?

X Q. 1043. I do not remember the date. Can you remember the date?

A. No, I cannot fix the date.

X Q. 1044. So far as my question is concerned, it don't make any difference.

A. This note was executed August 20th, 1888. That was before he left Yellow Springs, I presume.

X Q. 1045. I am asking after he left.

A. That was after the notes were executed. The notes are dated August 20th, 1888, as I recollect.

Mr. WHITAKER: You do not know when they were actually executed, do you?

Mr. ANDERSON: Which note do you refer to?

A. This note is dated New York. He must have been in New York August 20th, 1888. If you can tell the exact month in 1888 when he left Yellow Springs, I can testify more definitely.

X Q. 1046. Give us, according to your best recollection, the time when he left Yellow Springs.

A. I have no definite recollection.

X Q. 1047. I asked you when you saw him after he returned to Yellow Springs?

A. I answered that once before.

X Q. 1048. What do you say now?

A. He left in 1888 and if he came back to Ohio before the fall of 1889, I saw him in Ohio, but I never saw him outside of Ohio. The reason I state that, is that I am not sure that he came back to Ohio.

X Q. 1049. You did not see him in Ohio?

A. That is the best way I can put it now.

377 X Q. 1050. You do not recollect of seeing him in Ohio after he left Yellow Springs until he came back from Europe?

A. After he came back from Europe I remember of meeting him constantly.

Mr. WHITAKER: You mean after he came back from Ohio?

A. That is the same thing. After he came back from Europe he came to Ohio.

X Q. 1051. You do not know, then, the consideration for any of those notes except the $125,000 note and you were not present when any of them were executed, so far as you know, except that?

A. Oh, I remember the $125,000 note. Then I remember the Labrot Trust amounting—I do not remember exact figures—say $80,000 and then I remember the $70,000 note which was called—has been termed here "bribe" transaction—we had nothing to do with that—and then I cannot recall all of these small notes now. I knew something about them, but you will have to refresh my recollection some way.

X Q. 1052. Did you know, prior to the execution of these notes, that the consideration therefor was to be received by William Means or upon account and claims that he owed?

A. My understanding all the time that any money from the estate of Thomas W. Means was not to be charged against William Means. That there was a provision in the will which made them

as gifts and that they claimed under the head of gifts. That is the way I looked upon it.

X Q. 1053. Last question repeated.

Objected to on the ground of its assumption that at the time these notes were given, there was some arrangement that the consideration was to be received thereafter, for which there is no support in the testimony.

X Q. 1054. Did you know, Mr. Williams, at any time prior to the execution of these notes, other than the $125,000, of any arrangement between John Means and William Means whereby or in pursuance of which John Means was to make payment, or a payment for William Means, which payment or payments constituted the consideration for these notes or any of them?

Counsel for complainants object to the question on the ground that there is no allegation in the answer of respondents claiming that John Means was to pay any portion of the debt or obli-
378 gation of William Means as the consideration for said notes or any of them, but that the same is in direct conflict with the statements of the answer of respondents.

A. I have told you that John Means did about as he pleased and never consulted William nor myself very much about what he was doing.

X Q. 1055. That does not answer the question.

A. That is the question I am making now.

X Q. 1056. Please now, answer the question.

A. I have answered the question.

X Q. 1057. Do you consider that an answer to the question?

A. I consider that an answer to the question.

X Q. 1058. Is it the best you can make?

A. As near as I can make. I decline to answer any further on this quibbling way of asking questions.

X Q. 1059. When did you first learn of the Labrot Trust and the condition of William Means' account with reference to it?

A. I have been all over that a half dozen times. You will find it in the testimony. Why, I knew of the Labrot matter and William Means' dealing with Labrot even before Labrot died. I knew Labrot—personally acquainted with him, and met him at William Means' house and associated with him at his home and knew him when I met him on the streets of Cincinnati.

X Q. 1060. I am not asking when you first knew of Labrot, but when you first knew of the trust and its condition, and from whom did you learn it?

A. I have answered that question there.

X Q. 1061. When did you first learn that William was delinquent in the matter of his settlement with the trust, if at all and from whom?

A. It is hard to answer that question for the reason that up to the time of the failure of the bank William Means was not delinquent in regard to the Labrot matters, and would not have been, if

he ever was, had it not been that a portion of these securities in the bank, which William Means held for the Labrot Trust, had been used by John Means.

X Q. 1062. Now, that does not answer the question. Please answer it.

A. I cannot answer your question when you put in it things which I do not admit are correct.

X Q. 1063. Well, correct it, then.

A. Well, I have, in my answer.

379 X Q. 1064. What securities of the Labrot Trust did John Means secure from the bank when he paid the $125,000 note, if any?

A. Well, there was a large amount to secure a good portion of it. I don't say large amount—which William Means had in the bank and expected to use them for the Labrot Trust. I cannot, as I have stated before, give a list and amount of securities now, unless I have some papers to refresh my recollection.

X Q. 1065. Did John Means secure from the bank on the order that Mr. Hanna asked William Means to give when he paid the $125,000 any securities that had not already been pledged for the payment of the $125,000 to the bank? If so, state what.

A. I cannot tell you what amount, but John Means did get securities. I cannot tell you the amount nor the kind, but John Means got securities of William Means other than pledged to the bank.

X Q. 1066. I am asking, on the order that Mr. Hanna secured.

A. Well, the trouble was that John Means took that order and did as he pleased with it and did not let us know at the time just what he had done. That was the trouble about it.

X Q. 1067. Now, Mr. Williams, specify any securities that belonged to the Labrot Trust that John Means secured at any time.

A. Well, you see as I am telling you William Means had these securities—certain securities—that was his plan—to pay for the Labrot Trust. He did not regard anything pressing about the $125,000 or any necessity of John Means' sudden rush in to pay that without advising or consulting him, and he had securities which John Means took up or got possession of, which William Means expected to use for the Labrot Trust and I cannot give you the amount or kinds.

X Q. 1068. What was the first time, as near as you can state, that you learned the condition of the Labrot Trust?

A. What do you mean by the word "condition"?

X Q. 1069. You know, I presume, that William Means was short in his accounts in that matter?

A. No, I do not know that.

X Q. 1070. When did you first learn it, if at all?

A. I do not know that he was short, and do not want that impression to go out. We considered at the time when this payment was made, considering the amount of securities which Wil-

380 liam Means turned over to John Means and his interest in the estate, that there was sufficient to pay the Labrot Trust.

X Q. 1071. You stated in your examination in substance that you

objected to creditors knowing that the securities were turned over to John Means. Why did you have that objection?

A. Well, I do not believe that I stated that we objected.

X Q. 1072. Well, who did, then?

A. Well, John Means did not want it known.

X Q. 1073. Well, why?

A. If for no other reasons, you do not want your business transactions known, and there were other reasons.

X Q. 1074. Well, tell the other reasons.

A. I have gone over them a half dozen times.

X Q. 1075. I am not conscious of the fact you have gone over it even once. So be kind enough to do it now,

A. I do not know that John Means said to me at that time any particular reasons, but it was understood among us that the affair was to be kept quiet.

X Q. 1076. From what did you get that understanding?

A. Oh, from my relation to the parties at the time.

X Q. 1077. Well, what parties?

A. John Means and William Means.

X Q. 1078. That relation would not give you that understanding unless something was said.

A. I do not care about arguing that with you as a lawyer. I am a witness on the stand.

X Q. 1079. I am asking you that question.

A. Why, certainly; my relation and my knowledge of those transactions would put me in a different position from some outsider and would make me feel like keeping the matter quiet and secret.

X Q. 1080. Was there anything said that this shall not be made known for any reason? If so, state it. We want the whole story here.

A. I do not recollect of either of them using that language.

X Q. 1081. That in substance?

A. Oh, by the conduct and by the acts and by the relation of the parties to me and myself to the parties, why, we understood more from that than what we stated, that I am not running around and letting everybody know what is being done.

381 X Q. 1082. So far as you were aware, Mr. Williams, has not Mr. John Means applied the proceeds of all securities disposed of by him to the payment of William Means' obligations?

A. No. John Means has never rendered an account of the proceeds arising from the sale of those securities that I know of.

X Q. 1083. I am not asking whether he has rendered an account. I am asking if you are aware of him receiving the proceeds of any sales that he did not apply upon the payment of obligations of William Means?

A. I have told you several times before that I do not know what he did with the proceeds of the sale of these securities and cannot state until I see an account from him. That account I have never seen. There should have been an account made out by John Means stating the kind and amount of securities and what he received from the sale of stocks and an account rendered like any other man, and

that account, as I have told you, has not been made out that I know of.

X Q. 1084. Have you seen the books of Thomas W. Means since this suit commenced?

A. I have seen them but not examined them, Mr. Anderson, and not had time to.

X Q. 1085. Then you have not been anxious to know what became of the proceeds?

A. It is no use for you to assume so much nonsense in your questions. I have been busy since I have been here and attended to what I desired to in regard to this matter.

X Q. 1086. Have you read over the deposition of John Means—the transcript of the stenographer's notes?

A. I have not read over the entire deposition of John Means. It would take a man a long time to do that.

X Q. 1087. Have you not read over the deposition in which he speaks of the disposition he has made of the proceeds of the securities he received?

A. I have not. Neither has counsel nor any person called my attention to that part of his deposition. There isn't any such statement in his deposition.

X Q. 1088. You saw or read the credits endorsed on the $125,000 note; do you know the source from which those credits came?

A. Not from personal knowledge.

X Q. 1089. What do you know about it anyway?

A. Well, I do not know from my personal knowledge. That is all I can tell you or answer you.

X Q. 1090. I do not ask you for your personal knowledge. What is your information on the matter?

382 A. I do not recollect so much about it. I think that some of the proceeds of the securities were applied in payment of that note; how much I do not know and could not find out. And when they were applied or written on the back of that note I do not know, or when John Means concluded to put them down there on the back of that note. I have no information. The note now reads as it were all paid.

X Q. 1091. Do you mean, Mr. Williams, that Mr. John Means had received proceeds of securities that he has not accounted for or applied?

A. I have made no such statement. I have simply stated to you that I do not know.

X Q. 1092. Now, you did state the other day that you knew about the endorsement of credits on the $125,000 note, substantially that, and that there were some $28,000 of them for which there was no consideration in that note?

A. You are assuming in that question what is not true, and I have some reason to believe you know it is not true when you put it in that question.

X Q. 1093. I disavow that I know that it is not true or that I made any untrue assumption, and if I am in error, be kind enough to correct the error and state the fact.

A. My answer is "no."

X Q. 1094. Well, Mr. Williams, did you not state heretofore substantially in your examination that there was no consideration at any rate or at least something to that effect for about $28,000 of the amount for which that note was given?

A. My recollection is that I stated that if any portion of the payments on that note came from the estate of Thomas W. Means, that William Means did not have to pay it back.

X Q. 1095. Let me refresh your recollection, Mr. Williams. As I understood your evidence, it was in substance as follows: That this note was executed on or about the 22d or 23d of February, and the payment to the bank was on the 15th of February; that between those dates some $28,000 had been paid, according to the endorsements on the notes and that therefore there was no consideration to the amount of $28,000 for that note. That is the way I understood your testimony. If I am not correct, correct me.

A. No; my recollection is that I told you about that note, that the note was made payable to Thomas W. Means in order to keep the creditors from attacking the interest of William Means in
383 the estate, according to the letter of John Means; that the back of the note shows that there had been that amount of money paid prior to the execution of the note.

X Q. 1096. Paid, do you mean, on the indebtedness for which the note was given?

A. I wanted to state that the note was made for $125,000, and that there were two payments made before the execution of the note, as it appears on the back of the note, amounting to about $28,000, so that at the time of the execution of the note the consideration mentioned for $125,000 was too much.

X Q. 1097. But this $28,000 was a payment made, if at all, upon the indebtedness for which the note was given?

A. I cannot answer the question that way. It appears upon the back of the note that those payments were made.

X Q. 1098. Do you know anything about those two payments amounting to $28,000, drawing reference from the face of the note and what you see on the back of the note. Independently, what do you know about it?

A. Well, yes, I know another thing.

X Q. 1099. Well, what do you know?

A. Well, I know that John Means — of the note has all of William Means' securities.

X Q. 1100. That is passed by?

A. That is passed by so far as I am concerned. That is all I wish to say now.

X Q. 1101. Do you know anything about those two payments endorsed upon the note as you say prior to the day of its execution, having been made prior to this date of its execution accepted what you infer from the note and the endorsements on it?

A. I have told you that I do not.

X Q. 1102. Now, state what you know.

A. That is simply repeating the former answer to your former question.

X Q. 1103. I don't think it is responsive and has anything to do with the question.

A. We will state facts and let the judge decide that.

X Q. 1104. Can you make any better answer than that?

A. I have told you that John Means has the securities of William Means at that time and that upon the back of the note it appears payments have been made amounting to $28,000. If that is true the consideration, the face amount of the note ought to have been $98,000 instead of $125,000.

384 X Q. 1105. Well, then, all you do know is what you derived from seeing the face of the note, the endorsements on it, and the fact that John Means had William Means' securities in his hands?

A. There may be other matters that I don't recall now.

X Q. 1106. Well, that is all you recall?

A. I recall them at present.

X Q. 1107. I ask you if you recall anything more.

A. I don't recall any other matter just now.

X Q. 1108. Do you know of William Means having paid on that indebtedness, that was taken up from the bank, the sum of $28,000 or thereabout, or having resources under his command from which he might have made the payment? If so, state what they were between the 15th of February and the 22nd or 23rd of February.

A. I cannot state what time all the different securities were turned over to John Means. Now, there was the Huntington mortgage note and the $20,000 bond of the Lexington road, and other matters, and I cannot fix the precise date when they were turned over. I have stated that the face value of the securities amounted to something over $250,000. Now, I cannot state at the time that John Means went up the river, whether he had possession of all those securities. He had possession of some of them.

X Q. 1109. I have before asked you what you knew except as an inference from the fact that he had his securities and what appears on this note and the back of it. Do you know of any other resources than those that John Means had at that time from which William Means could have made a payment of $28,000 during that period?

A. I cannot say the exact amount of securities.

Mr. HAGER: The intention of that question is if you know whether William Means paid the sum of $28,000 or was in command of resources personally at that time from which he might have made such payment?

A. Why, he had at that time the expectancy in his father's estate.

Mr. ANDERSON: That is one of the resources?

A. That is, he had it in one sense, but it was conveyed prior to that time, of course, to his children.

385 X Q. 1110. Do you mean to be understood as saying that his expectancy in his father's estate had been conveyed to his children prior to the date of that note, 23rd of February, 1888?

A. In 1888 his expectancy in his father's estate had not been conveyed; of course not. He had his expectancy in his father's estate up to the time—is what I wanted to say—it was conveyed to his children, but at the time of this payment it had not been conveyed to his children, at the time it appears upon the back of the note.

X Q. 1111. Do you know of him having had $28,000 at his command from which he could have made a payment of $28,000 and that note during that period; I am asking about money?

Objected to as irrelevant and illegal.

A. There were some securities which he wanted to turn over to John Means, and which John Means got, I think, after the date, as it appears on the back of that note, of those two payments. The amount and kind I cannot state.

X Q. 1112. Did you, during that period, have other securities than those in the hands of John Means which he reduced into money with which he could or did make those payments in that period?

A. If you mean by that whether William Means made the payment.

X Q. 1113. Yes.

A. Why, I don't think that he did; that is, he did not handle the money.

X Q. 1114. That is what we are getting at?

A. I didn't understand what you were driving at. I have tried to answer you.

X Q. 1115. Mr. Williams, in your examination-in-chief you have stated that there was a trouble between John Means and William Means while they were interested in Means, Kyle & Company together or at Pine Grove. Just state what that trouble was?

A. Well, William had charge in the beginning of that Pine Grove furnace and Means, Kyle & Company, and John interfered with William, and then came the breach.

X Q. 1116. Now, do you state that from your personal knowledge or from hearsay?

A. I have defined your hearsay and personal knowledge once before, Mr. Anderson. Every time I state what a man tells me you call it hearsay, and every time I tell you what I know you
386 call it an opinion, and it is hard for me to tell what you want. In other words, it is splitting hairs.

X Q. 1117. Now, did you say that from personal knowledge or from hearsay?

A. Well, I knew William Means left Means, Kyle & Company, and then most of it came from conversations of William Means and his family and my inferences from talks with Thomas W. Means. John and William had some quarrel there about a man named Dick Lewis. That is about the origin of the trouble between John and William.

X Q. 1118. What did you hear John say and what did you hear William say?

A. I don't care about going into details.

X Q. 1119. Were you present at the quarrel?

A. I have already answered where I got my information as near as I can tell you.

X Q. 1120. Were you present and did you hear the quarrel?

A. Why, I knew there was trouble. I was living then in the neighborhood. I knew there was trouble. I knew Richard Lewis and I knew his family. I have heard Richard Lewis talk about it and have heard William Means talk about it, and have seen Richard Lewis afterward, and he told me about it.

X Q. 1121. You got it from Richard Lewis and William Means, did you not?

A. I told you that I had talked down home with Thomas W. Means, and I have made inferences from his conversations. I cannot tell you what particular conversation.

X Q. 1122. You were present at the time of the quarrel?

A. I was boarding in the neighborhood.

X Q. 1123. I meant at the time you did not hear the quarrel.

A. I was not present in the sense of hearing the quarrel.

X Q. 1124. Did you know the fact that there was a quarrel?

A. There was no doubt about that.

X Q. 1125. Were you there? How did you know?

A. I have already told you. I say there was a quarrel about Dick Lewis, and there may have been other matters, and there was some trouble about it.

X Q. 1126. Do you know how the sale of Means, Kyle & Company, when it was sold—when William Means went out—do you know how it came about?

387 A. I cannot recall the particulars. How do you mean? The sale of the whole stock of Means, Kyle & Company?

X Q. 1127. Do you know when William Means went out of that enterprise and ceased to be interested in Means, Kyle & Co., or Pine Grove?

A. I don't know that I can fix the exact date.

X Q. 1128. Do you know now about that event?

A. About what event?

X Q. 1129. Do you know of the fact that William Means went out of that enterprise or business and that the property was sold about that time or at that time?

A. Oh, I don't remember the details of the transaction and I would not say that William Means went out. It is a question whether he went out or whether he was compelled to go out.

X Q. 1130. When did he cease to be interested in Means, Kyle & Company or Pine Grove?

A. I cannot fix the date.

X Q. 1131. Give it as near as you can, within five years or two years or one year.

A. As near as I can get at it now, I should think that he ceased to have any interest amounting to anything in 1869. He may have had stock transferred to him back afterwards and become interest- in the firm. I don't know now. I want you to understand as to

all these dates I may be mistaken. I am giving my best recollection.

X Q. 1132. What I am inquiring about is not so much the date as the facts how William Means ceased to be interested in that property and what brought it about.

A. Well, there was trouble between William Means and John Means and if I am not mistaken Richard Lewis was in there. Remember this happened in 1869, over twenty years ago, and I cannot give the details of the transaction.

X Q. 1133. About the sale of the property?

A. I have given you all I know.

X Q. 1134. Who was the mover in bringing about that sale? You know who organized it and now tell us who brought about the sale?

A. I know who advised the father to buy some of those furnaces that went to make up Means, Kyle & Company.

X Q. 1135. Who was it?

A. William Means.

X Q. 1136. Who brought about the sale of the property when William Means went out?

388 A. I don't remember so much about the circumstances of the sale just now.

X Q. 1137. Didn't know anything about that, do you?

A. I have not stated that, quote me correctly.

X Q. 1138. That is what I am asking you for.

A. I have answered that question, and I don't know anything about the particular circumstances of the sale just now.

X Q. 1139. Do you know anything about the circumstances?

A. I know there was a sale.

X Q. 1140. Tell us the circumstances of the sale, any of them.

A. I cannot recall the particular circumstances of the sale.

X Q. 1141. Then you do not know who was the mover in bringing about that sale?

A. Of the stock?

X Q. 1142. Of the whole property when William Means went out.

A. I don't know what you mean by that. What do you mean by sold?

X Q. 1143. The whole Pine Grove or Means, Kyle & Company property. We know it by one name sometimes and by another sometimes.

A. The property was not sold. The same parties continued to own the property and control the majority of it and I cannot tell what changes were made in the stock.

X Q. 1144. William Means ceased to have any interest there, didn't he?

A. I answered your question half dozen times about that.

X Q. 1145. That you did not know.

A. I will answer your question and you need not volunteer an answer for me.

X Q. 1146. Then answer.

A. I have answered your question so frequently that I don't think it is necessary to keep on any longer.

X Q. 1147. I am going to find out what you know about that event if it takes me a week.

A. What event do you mean?

X Q. 1148. I am asking you to tell me what you know about the circumstances of the sale of Pine Grove furnace when it was reorganized and William Means ceased to have any interest in it. What brought about the sale. I cannot state the question any more definitely than that.

389 A. I don't know of any particular change being made in the concern except there was a change made in the interest of Richard Lewis and William Means as stockholders.

X Q. 1149. Don't you know that when that reorganization took place or William Means ceased to have any interest in the property whatever or in the company?

A. He might have sold out his interest. And I think afterwards that he may have become a stockholder in Means, Kyle & Company.

X Q. 1150. Now, let's see. Do you know how that change took place? Did they sell the entire property and did William Means sell his interest?

A. I don't remember the manner of the sale.

X Q. 1151. When it was reorganized, do you know anything about the surplus money on hand?

A. Oh, no. I don't remember. I don't know the exact financial condition of William Means when he sold out.

X Q. 1152. I don't ask you from the exact condition.

A. I cannot approximate it generally.

X Q. 1153. Was there a large surplus of money or personal property belonging to that enterprise at the time the property was sold and William Means went out if so, approximate what it was?

A. Oh, the concern made money all the time up to the time that Means bought in one of the furnaces or advised his father to buy it in—acting as agent for it up to the time that he went out. Now the exact amount of money that was made, I cannot tell you.

X Q. 1154. Now, who brought about that change of interest of William Means when he sold out and went out?

A. I have told you that there was a trouble there.

X Q. 1155. Who was the mover in bringing about the sale and having William go?

A. Well, I have told you that there was a trouble there as Thomas W. Means sided with John Means and against William Means, and William Means left or had to go. Now, that is the best I can put it.

X Q. 1156. Now, let me ask you. Isn't it the fact that there was about $200,000 of personal property then on hand?

A. I could not tell you what amount it was.

X Q. 1157. And that William Means and his coactors Mr. Lewis

and one other party conceived the idea of squeezing his
390 father out and John out and putting that property to sale and then using this $200,000 of personal property to largely pay for the purchase?

X Q. 1158. Don't you know that to be a fact?

A. If there was any squeezing done William Means was squeezed out. Thomas W. Means at that time had ample money and so did John Means to protect any interest they had in Means, Kyle & Company and William Means could not squeeze them if he wanted to, nor Dick Lewis.

X Q. 1159. Now, just tell me what ample money either John Means or Thomas W. Means had at that time. Mention any sum whatever that you know of outside of their interest in Means, Kyle & Company?

A. I suppose that at that time Thomas W. Means was worth at least a million dollars.

X Q. 1160. That is only a supposition?

A. Oh, no.

X Q. 1161. What do you know about it?

A. I am not certain but what John Means was worth at that time at least half a million or more—maybe a million.

X Q. 1162. Did you ever know what John Means was worth, do you know today?

A. I am informed that John Means today is worth over a million dollars.

X Q. 1163. What do you know about it? I am not asking for your opinion.

A. I know from information I have got. That is all I can tell you about.

X Q. 1165. Just simply rumor, isn't it?

A. I said it was information and not rumor.

X Q. 1166. I asked you if your information is not rumor?

A. Why, no, I call it information, you may call it rumor.

X Q. 1167. What do you call information?

A. I do not care to split hairs. I arrived at the estimate of John Means' wealth just like I arrived at the estimate of any other man's wealth along their community. I don't know by examination of the books and stocks what they are worth but you hear in a community what a man is worth. Suppose I ask you what Dave Sinton is worth in Cincinnati?

X Q. 1168. I could not swear that he was worth ten dollars but I believe he is worth a good many million and that is the way I can put it.

A. I swear upon my information.

X Q. 1169. Mr. Williams, was not William Means in
391 Ashland during a large part of the summer of 1890 after the death of his father and I believe prior to that for some time?

A. He may have been there a good part of the time in summer and perhaps before. I cannot fix dates so much.

X Q. 1170. You need not mind dates so much. It was after his father's death, wasn't it?

A. I remember he was there but I am telling only what I know. I remember that he was there at the time of his father's death. I met him there at the house.

X Q. 1171. Well, after his father's death and before he signed the $136,000 receipt he was there quite a length of time, was he not?

A. I could not fix the date or time or length of times.

X Q. 1172. He was there frequently?

A. He was there in 1890.

X Q. 1173. Do you know whether or not he examined his father's books during that time prior to the signing of the $136,000 receipt?

A. Yes, sir; I will state this. That Isaac Jordan insisted upon his examining his father's books and that he went down to examine the books in some bank and he claimed that Mr. Adams went with him and that he did not have the opportunity to examine the books alone and did not examine them.

X Q. 1174. That was Thomas M. Adams, who sits here, one of the respondents?

A. Yes, sir.

X Q. 1175. Did you understand him to say that he could not have access to the books or did not have access to the books or that he could not examine them himself because Thomas M. Adams was present?

A. William Means said that he wanted access to the books. That the books were down in some office or bank, that when he went to the bank Mr. Adams went with him and was looking over his shoulder and that he could not examine those books unless he was left alone to examine them, and that he was disgusted, that he was not allowed there as a son of Thomas W. Means, to examine those books alone, and not interfered with. Now, that is substantially his conversation with me. I know nothing about the fact. He claimed that he was a son of Thomas W. Means and no grandchild had a right to examine them.

X Q. 1176. The only reason he gave why he did not examine the books, if he gave any, was that he would not do it with Mr. Adams looking over his shoulder?

392 A. That was the reason that he gave at that time as I understood it.

X Q. 1177. Or in Mr. Adams' presence?

A. That was the reason he gave, that he did not examine the books upon that occasion.

X Q. 1178. Are you positive that he said that Mr. Adams looked over his shoulder all the time?

A. Oh, I did not say all the time. I am merely quoting the language. He said Thomas Adams looked over his shoulder. He did not say all the time nor how much of the time. I know nothing about the facts in the case except what William Means told me.

X Q. 1179. That was the one occasion when Mr. Jordan was there?

A. No, I didn't say that Mr. Jordan was there. I said that Mr. Jordan insisted upon his examining the books, I remember.

X Q. 1180. On that suggestion he did examine the books some?

A. I did not say that. That is the trouble about you all the time. You are assuming in your question what is not a correct statement of my testimony. I wish the examiner to put that down again.

X Q. 1181. Fix the time about when that happened.

A. Mr. Means did not fix the date with me and I cannot fix the date with you.

X Q. 1182. It was before the signing of this $136,000 receipt?

A. I told you that Mr. Means did not fix the date with me and I cannot fix the date for you.

X Q. 1183. I am asking if the time he told you was before the signing of the $136,000 receipt?

A. The time you told me?

X Q. 1184. Yes.

A. I cannot fix the date. We have had a hundred and one conversations and I cannot fix the precise date of all these talks and the dates of papers. There is no use talking about it.

X Q. 1185. How often did you hear him say that he could not examine those books except when Thomas Adams was present?

A. I am telling you this incident which occurred and which he referred to.

X Q. 1186. And that is the only one he did refer to?

A. He mentioned that fact and complained that he could not have access to the books without somebody being with him. That is the nature of his complaint, Mr. Anderson, as certain as you are sitting in that chair.

393 X Q. 1187. When and where did Margaret Means inform you that the failure of the Metropolitan bank had never been made known to Thomas W. Means, as nearly as you can state?

A. As nearly as I can state it was some time before William Means' trial in 1889. I went there quite frequently at that time. I remember something else she told me along there. She told me at the same time that she would like for me to see her father but that he was not in a condition for me to see him.

X Q. 1188. Well, then, how long before the trial?

A. I will not fix any precise date. It was some time during the fall or winter of 1889 as near as I can fix the date for you. I went there quite frequently at that time.

X Q. 1189. Who was present, if any one?

A. I think that only she and Mrs. Adams were in the room. It was in the drawing-room parlor there at the old homestead.

X Q. 1190. In Ashland?

A. In Ashland, yes, sir. That was about the time that she was asking whether it would not be better for William to plead guilty to these indictments. She was very much worried.

X Q. 1191. You never had such a conversation with her but at one time, did you?

A. I remember her telling me along about that time that the

failure of the bank had not been communicated to Thomas W. Means.

X Q. 1192. Might she not have said the indictments had not been?

A. I know the difference between the indictment and the failure of the Metropolitan bank. You may not, but I do.

X Q. 1193. Will you answer my question?

A. It referred to the failure of the bank and the bank trouble.

X Q. 1194. She was referring to the whole trouble, the failure of the bank and the indictments and all?

A. I wish you would quote my testimony and not misquote me as you are constantly doing.

X Q. 1195. Please answer my question. You went there I believe you have said, in the examination here, for the purpose of talking about the propriety of having William Means plead guilty?

A. No, sir; there never was in my lifetime an hour when I wanted William Means to plead guilty. It is impossible to say when it was and what called me there. I remember hunting some
394 letters. Mrs. Adams and Miss Means could probably tell you more about it than I could. I remember they were talking about hiring McSweeny as counsel, and other matters. I don't remember what called me there. If you wish to know the conversation about the indictments I will tell you that. If you want the conversation about William Means pleading guilty to the indictments, I will give you that.

X Q. 1196. In the latter part of answer 99 you say "Later along when the talk of William Means's wife for alimony and other matters and some other matter." What other matters did you refer to?

A. I said later along there was talk about Mrs. Means' alimony and about the trustees or rather the children coming in for the trust matters. I should have inserted the word trust there. I remember that in particular. There was some talk about settlement.

X Q. 1197. You have already testified to those other matters this morning?

A. Mainly, I have, Mr. Anderson. By other matter I was referring to other matters, to matters involved in this settlement with the children.

X Q. 1198. State if you know where John Means was at the death of his father?

A. I do not know. I don't remember of seeing him there at the time. I was there a short time but I did not see John Means. I could not tell you where he was, Mr. Anderson. I did not see him at Mr. Thomas W. Means' home.

X Q. 1199. Do you know whether he was at home or in the State of Kentucky at that time?

A. I could not say where he was. I did not meet him there at the time that I was at the homestead of Thomas W. Means, when he was in his coffin in there.

X Q. 1200. Was John Means in Ashland in October, 1890, or for some months previous?

A. I did not meet him, that is all I can tell you. I don't know where John Means was.

X Q. 1201. Mr. Williams, I believe you have identified the handwriting of Mr. McConville and William Means and John Means, during your examination. I will ask you to look at this marginal entry on the letter of John Means dated Ashland, Ky., 24th of February, 1888, marked Exhibit 60, to William Means, Esq., Cincinnati, Ohio, which marginal entry read as follows: T. W. M. receipt dated February 28th, 1888, $1,000, and tell me in whose handwriting that is?

395 A. Well, it don't look written as well as William Means usually writes. There are some parts of it that look like his handwriting.

X Q. 1202. What do you say as to that, is it or is it not?

A. I would not swear positively.

X Q. 1203. To the best of your knowledge and belief?

A. I can only swear I did. It don't look as well as he usually writes, while some portions of it resembles the handwriting.

X Q. 1204. What portion of it resembles his handwriting?

A. Well, that first word there. It may be his handwriting but it don't look to me like it was his.

X Q. 1205. That first word don't resemble it?

A. No; not exactly. He may have written it, but I don't know exactly. He may have written it in a hurry.

X Q. 1206. Allowing that he might have written hurriedly and that it is written in the position it is what would you say as to whether he wrote it or not?

A. I have already told you all I know. If you stand quibbling over it an hour I cannot give you a better answer.

X Q. 1207. Mr. Williams, will you tell me how recently you have seen William Means?

A. Well, let me know what is your object. If you are asking that question as a mere matter of curiosity I will decline to answer it.

X Q. 1208. I ask it as a question proper for me to know.

Mr. WHITAKER: I, as counsel for the witness, advise him not to answer that question.

Mr. ANDERSON: Mr. Williams, I put that question, how recently have you seen William Means?

A. I decline on advice of counsel to answer and outside of the advice of counsel, do not wish to answer unless you give reasons for knowing.

X Q. 1209. Because he is a beneficiary and you are trustee under the will in this case, and it is proper for me to know?

A. I decline to answer.

X Q. 1210. Have you not seen him since the bill was filed?

Mr. WHITAKER: I say as his counsel that he is not compelled to answer and I desire that he do not answer the question.

396 A. Since counsel objects, you know I cannot answer it if I have any regard for counsel.

X Q. 1211. Have you not seen him since you came to Cincinnati to testify in this case?

Mr. WHITAKER: You will observe the same injunction from your attorney.

The WITNESS: The stenographer might as well write the same declination all the way through.

X Q. 1212. I will ask you if William Means, since you came here to testify last week has not been in Cincinnati in consultation with you concerning this case?

Mr. WHITAKER: Mr. Williams will through the advice of his counsel not answer that question.

Mr. ANDERSON: I insist upon an answer.

The WITNESS: I told the examiner to write the answer all the way through—the declination. Whenever my counsel suggests for me not to answer the question, I will not answer it. I want to state another thing, that I do not know why you are asking these questions.

X Q. 1213. I don't — to advise you why I am asking these questions and I have a reason and a good reason, and I state it so on my professional honor, for putting the questions and therefore I put in good faith. I will ask you if William Means is not now in the city of Cincinnati or Covington and in constant communication with yourself?

Mr. WHITAKER: You will not answer the question on the advice of your attorney.

A. I decline to answer on the advice of counsel.

Mr. ANDERSON: Mr. Williams you have stated in answer to question 109, the securities that were turned over to William Means to John Means. I will ask you now if you have any knowledge about that matter independent of what you learned from the letter of John Means and his family.

A. Oh, I had conversations with William Means about the matter as a lawyer and client do, about his affairs.

X Q. 1214. You have spoken of the note given to Thomas W. Means as being a temporary expedient or words to that effect as I remember, I will ask you if that was the case as to all the notes other than the $125,000 note about which you have spoken more particularly?

A. Well, all the notes made to Thomas W. Means, as stated
397 before were made to prevent an attack of the creditors upon the interest of William Means' share in the estate of Thomas W. Means. That is the way I understand about it.

X Q. 1215. That is simply an inference of yours, is it not? You have no personal knowledge of it?

A. Didn't I tell you about the conversation that occurred between John Means and I upon the steamboat. Now, you have asked me that question fifteen times that I know of and I don't know whether you have asked more than that.

X Q. 1216. I am asking the question in good faith and will you kindly answer that and save time?

A. If you will ask a question about fifteen times more I will try to stay here. I have answered your question, Mr. Anderson and that I have conversation with John Means on the trip up the river on Wednesday and that was substantially stated in his letter to William Means and I know it from other sources that I cannot now recall.

X Q. 1217. Well, now, do you adopt what you have heretofore said as to the conversation going up on the boat as being all you can state or recall now?

A. I cannot recall to you every little detail of a conversation which happened years ago. I only endeavor to give you the principal parts of it. Some portions of it may be omitted.

X Q. 1218. I am talking about the notes other than the $125,000 note. Did John Means say one word to you going up on the boat about any note except the $125,000 note; if so, state what he said?

A. Well, the question came up about executing notes to Thomas W. Means and that was the plan that was suggested by John Means to me.

X Q. 1219. The same plan as to all the notes that would be executed as you have stated concerning the $125,000 note.

A. He said just as I have quoted, referring to notes to be executed to Thomas W. Means.

X Q. 1220. Now, then, did you tell William Means concerning that fact, the fraudulent scheme that you referred to heretofore before he went East; if so, when and where?

A. Now, I have gone over that, Mr. Anderson, two or three times for you and you will see by going over the evidence that I have and I do not know your object unless it is to kill time I told you that William Means got that letter from John Means and signed that note.

X Q. 1221. What do you say as to the notes that were owing
398 to the Ashland National bank taken up after the failure of the Metropolitan?

A. I do not know what notes you refer to.

X Q. 1222. Amounting to about $15,000? Does it apply to them?

A. I cannot remember every particular note, and it is no use to take up time with that.

X Q. 1223. You do not know anything about that note?

A. I did not say that. That is the trouble. You are misquoting me all the time. I wish the stenographer would put that down.

X Q. 1224. You have spoke of a $100,000 loss in the Culbertson matter in Kentucky, which left an account of $100,000 against Mr. Culbertson, a son-in-law, which Mr. Means did not charge against Mr. or Mrs. Culbertson, either one. Isn't it the fact that that loss was made by an enterprise three-fourths of which was owned by

Thomas W. Means and that only one-fourth of it was the loss of Mr. Culbertson?

A. Why, every relative of Thomas W. Means' family know that Mr. Culbertson was responsible for that loss and he was censured for it, but it was not charged against him.

X Q. 1225. But, in point of fact, legally it was three-fourths of it the loss of Thomas W. Means?

A. I have no information of that sort. You can find all about that Culbertson loss to him and family from John Means' testimony.

X Q. 1226. You have stated that Mr. Means stated to you that it was his intention to keep back part of his estate so that he might provide for an unfortunate child should he happen to have one—or words to that effect?

A. Yes, sir.

X Q. 1227. When did he tell you that?

A. I told you I could not fix the precise date.

X Q. 1228. Well, about?

A. Oh, somewhere after 1876.

X Q. 1229. Where?

A. Well, talks I have had with the old gentleman. If I could fix the exact date of some other matter, I could fix the date of that. Down in his own room, he and I were there together frequently alone and there was no member of the house about except he and I.

X Q. 1230. Can you recall the conversation?

A. It was after '76. He repeated those words very frequently to me. It seemed to be a hobby of his that he never intended to let a child he had suffer.

399 X Q. 1231. That is what he said?

A. No. He repeated that conversation several times, and every time he would repeat the conversation I do not assume to repeat the exact words, but that was the substance of it. No, not those words, but that was the substance of every conversation I had with him. The substance of his conversation was that he did not intend to execute all his estate while he lived but always keep back sufficient to provide for any child who was unfortunate.

X Q. 1232. Mr. Williams, you have stated that Thomas W. Means did not prosecute any important business without consulting John Means from '78 to '82. What do you personally know about that matter? Were you ever present at any consultation?

A. Between whom?

X Q. 1233. John Means and Thomas W. Means.

A. Now, you have gone over that a half dozen times. Let the stenographer put that down. This thing of chewing over the same thing I want the examiner to know it. Now, what is your question. I told you before I had been present on a certain occasion. I do not want to go over the details and discusss that this afternoon—and that I had heard their conversation with John Means about it while he lived there. He would always advise with John before doing anything of any importance.

X Q. 1245. Did not the $20,000 securities in the safe of the Grand

hotel belong to the Labrot Trust at the time of the failure of the bank?

A. I cannot say about that. At that time, William Means, as I told you before--before the bank failed, always felt that he had sufficient securities to pay the Labrot Trust, and for some time before that, and this $20,000 was used, as I understand, in part payment of the Labrot Trust—the Huntington mortgage.

X Q. 1246. Didn't they, in fact, belong to the Labrot Trust?

A. I don't know that you can say that anything belongs to a man till he gets it.

X Q. 1247. You have stated in your examination that William Means did not want the $125,000 that was owing the bank paid until others came in with the same and paid up; or words to that effect?

A. Yes, sir.

X Q. 1248. What other did you refer to?

A. You see there were the directors. There was Gerke, Roth, Duckworth, De Camp, and all of them that owed just as much
400 money as William Means did. I stated that as one of the reasons. We wanted time to advise with them. They had not paid in anything at the time the $125,000 was paid by John Means and we did not want to put those stocks on the market and have them sacrificed by any forced sale. We wanted time to look around and realize money upon the securities—and the other reasons I stated in my direct examination, without going over them.

X Q. 1249. Didn't you know that those stocks were all collateral to this $125,000 that was paid, and that that $125,000 was an individual debt that William Means owed the bank and that no person was in with him in that indebtedness?

Objected to as repetition.

A. Why, that was what you might call a bank debt. William Means individually got not much use. It was used buying bank stock on the streets. Stocks were being sacrificed, and William Means individually derived no benefit from it other than as a stockholder in the bank. It was used in keeping up the credit of the bank, but all the securities that William Means had were not attached to those notes. In fact, William Means was roped into that bank. You do not look upon those debts in the same sense as where he got the money and used it as an individual.

X Q. 1250. Is it your understanding that Gerke and Roth and De Camp and those you have mentioned were equally liable upon this $125,000 to the bank?

A. I understand that they owed the bank. They were in the deal there and stopped the stock from being sold at too low rates, and they were attempting to keep up the price of the stock and they were compelled to buy in stock that way to keep up the credit of the bank. I merely mention this to show that it was not a debt of William Means like the money which he had used individually. That is the trouble about it. They had gotten him into that hole.

I do not say all of it, but most of it. I cannot say just exactly how much, and the other directors bought stock.

X Q. 1269. Didn't you say "you"? You did not put in any qualification, did you?

A. I am telling you what I said. Mr. Adams never individually promised to pay $26,000, and if he so understood it, he was mistaken. I referred to the executors and perhaps he misunderstood me at that time. I referred to him as one of the executors.

401 And then Tom struck at me and Glidden caught Tom and got him away outside of the room.

Mr. HAGER: I believe you disclaim that Mr. Adams had ever made any such promise to you personally.

Mr. ANDERSON: Or otherwise.

WITNESS: I do not remember of Mr. Adams being present at that meeting where we were agreed. When the agreement was made about the $26,000 Tom was not present, but I think Tom was present when the receipts were signed, and understood what we had arranged on the river bank.

X Q. 1270. You have stated on cross-examination, in substance, if I remember correctly, that when the receipt for $136,000 was signed by William Means, that it was not final as between William Means and the administrators, but that there was to be an adjustment afterwards. Was there anything to that effect stated at the time; if so, by whom and what?

A. Why, the $136,000 receipt was signed and the $26,000 receipt was signed at that time, and we understood it was only a receipt, and that if the estate—it was a receipt for $136,000, and that that receipt in itself was no final matter, even if it showed to be given to the administrators, if there was anything wrong about it. We have since discovered, as we think, that the receipt was wrong. We always reserved the right to go behind the receipts. It was nothing but a receipt and it made no difference whether it was a receipt for $136,000 or $200,000. The receipt itself amounted to nothing so far as that went, and now we have found out, as we think, that we do not owe the estate that much money. And then we did it for the purpose I have mentioned before, and I do not propose to go into the details of the matter. I have told you what Cook said about the consideration of the receipt.

Mr. ANDERSON: I move to strike out that answer as not responsive.

X Q. 1271. Last question repeated.

A. I do not remember of any particular transaction wherein it was stated whether the receipt was final or not final, but we understood it was not final.

X Q. 1272. Was it not then arranged that the administrators should deliver to William Means the collaterals received from the bank and all other securities that they held or claimed to hold or that John Means held, along with the notes they held, and did

402 they not the next day deliver the notes amounting to over $280,000, on which they claimed a balance of $36,000 and all

collaterals securing the same, or any of the same held then by John Means.

Objected to as repetition.

A. I have answered the question once; I do not remember of any such conversation.

X Q. 1273. Who put William Means in a hole, as you have stated, when he went to Ashland?

Objected to as irrelevant, illegal and having nothing to do with the matter.

A. Well, I want to modify that statement a little by stating, it may depend upon the result of this litigation as to whether it would turn out that way.

X Q. 1274. But you said you had to get him out of a hole. What did you mean by that?

A. I was referring then more particularly to the time that I. N. Jordan and I went up there.

X Q. 1275. Went up there and had him revoke his order to pay?

A. Yes. And Mr. Jordan then stated—so you will understand it—that the time had now come to settle up his interest in the estate—to revoke those matters, and that he was attorney for the bank and creditors and would make the adjustment with the creditors without any trouble, and then he would demand and insist upon a settlement of William Means' interest in that estate.

X Q. 1276. The order that you referred to as being revoked was the one of June 16th?

A. I do not remember the exact dates. The paper itself shows, which is in evidence, what it purports to be.

Adjourned to Saturday, April 8th, 1893, 10 a. m.

SATURDAY, *April 8th*—10 o'clock a. m

Present: Messrs. Glidden and Whitaker, for complainants; Hager and Anderson, for defendants.

Cross-examination of EVAN WILLIAMS continued.

By Mr. ANDERSON:

X Q. 1277. Mr. Williams, will you name the securities that William Means had that were the property of the Labrot trust at the time of the failure of the Metropolitan bank?

Objected to as repetition.

403 A. I have answered that question several times. William Means had securities which were not attached to the note.

X Q. 1278. Which note?

A. The bank notes. It is impossible for me to name the amount or kind unless the securities were produced.

X Q. 1280. Do you know whether or not William Means furnished John Means with a list of his liabilities when he was here on his first trip?

A. I do not think that he did.

X Q. 1281. Do you know anything about that personally?

A. I was with him and my impression is that he did not.

X Q. 1282. You simply mean by that that you have no knowledge of the subject?

A. No. I simply mean just exactly what I say.

X Q. 1283. Did he not furnish John Means any paper whatever upon his first trip here, purporting to be a list of his liabilities, amounting to $125,000 or $130,000?

A. No; not that I know of. As I said before, John Means left us on the first trip without any assurance or statement that that amount would be paid by him.

X Q. 1284. I am not asking for that. I am asking if you know positively of your own knowledge whether he did deliver such a list of liabilities to John Means?

A. I was constantly with William Means, advising with him, and he did not, to my knowledge.

X Q. 1285. Did you say that you were not out of William Means' presence during all the time that John Means was here on that first trip?

A. William Means was very seldom out of my presence. We remained most of the time at the Grand hotel and in his room, and as I stated to you, slept in the same room and ate our meals together.

X Q. 1286. I ask you whether you state here that you were not out of the presence of William Means during any of the time that John Means was here on his first trip?

A. Why, as I have stated before, I was constantly with him. There may have been a few minutes when we were separate and apart, but as I told you, we were at the same hotel, in the same room, and constantly advising and consulting with one another. Hardly any important thing was done at that time without letting me know.

X Q. 1287. Then if a list was given to John Means of William Means' liabilities by William Means on John Means' first
404 trip after the failure—the first visit here after the failure—you did not know anything about it and did not advise it?

A. I am pretty positive that no list was given because John Means went away without giving us, as we understood it, any assistance on the first trip.

X Q. 1288. Do you know whether or not Mr. Hanna came to see Mr. William Means on the evening of the first day that Mr. John Means was here, the first time after the failure of the bank?

A. I do not remember of his coming that particular evening, but Henry Hanna was frequently there and acted the part of a very good friend.

X Q. 1289. Do you know whether or not Mr. Hanna requested Mr. William Means to make such a list?

A. Not during John Means' first trip.

X Q. 1290. Or whether or not he suggested the propriety of paying the $125,000 during that first visit of John Means?

A. Not in my presence. I want to say here, Mr. Anderson, in justice to us both, that I think that in the beginning of our cross-examination you and I have these first and second trips mixed, and — whether it is your fault or mine or the examiners?

X Q. 1291. It is clear in my mind.

A. It is clear in my mind, sir.

Mr. HAGER: Is the mortgage executed by William Means to yourself and Charles W. Baker, in October, 1880, inquired of the other day in examination, the identical mortgage that you set up in the suit for the sale or partition of the Means homestead property in Ashland?

Objected to.

A. I think it is. I remember of only one mortgage which William Means executed to me and one mortgage executed to Mr. Baker on the homestead property in Ashland.

X Q. 1292. In that suit that mortgage, either the original or by copy, is filed, is it not, in our court?

A. I think Mr. Burns set up Mr. Baker's mortgage and also my mortgage in the Ashland National Bank suit against William Means in the Boyd circuit court of Kentucky.

Mr. ANDERSON: State whether or not Mr. William Means conveyed to you his undivided fifth interest in the real estate in Lawrence county, Ohio, of which his mother died seized.

Objected to.

405 A. He conveyed to me his one-fifth interest of a farm, but in the deed the dower right of Mrs. William Means was not included; in other words, the deed was not signed by her. I want to tell what interest I got in the estate.

X Q. 1293. What was the consideration mentioned in the deed?

Objected to.

A. I cannot furnish the exact amount just now, Mr. Anderson, but I will furnish the amount, if you wish it, when I go home.

X Q. 1294. That deed was made of record about what date?

A. I cannot tell now. I will furnish what information you wish.

X Q. 1295. Can you state whether it was before or after the failure of the Metropolitan National bank?

A. I am not sure but I think it was after the failure of the Metropolitan, and I will furnish you with dates and amounts, and any information you wish about the deed as soon as I get to Ironton.

X Q. 1296. Was the consideration for moneys or services that you rendered him in connection with his troubles in the bank?

Objected to.

A. It was for money loaned him and counsel fees at that time, past and prospective.

X Q. 1297. What portion of it was money at that time loaned?

Objected to.

A. I cannot give you the amount now without looking over the

paper. Mr. Means and I came to an understanding about it at that time.

X Q. 1298. Could you give some idea how much money you had already given him?

A. I cannot. I would have to go over my books.

X Q. 1299. Approximate it.

A. I do not want to approximate it.

X Q. 1300. Was it $500?

A. Yes. I let him have more than that in one lump at Yellow Springs.

X Q. 1301. Was it more than a thousand?

A. Yes, it was more than a thousand.

X Q. 1302. What was that money for?

A. I loaned him money, some of which he used for himself and some for his family at Yellow Springs.

406 X Q. 1303. These prospective necessities were what he used for his family and necessities g-o-ing out of the failure?

A. I do not see why you want to misunderstand my answer. I said the counsel fees past and prospective.

X Q. 1304. Oh, yes. Well, was the consideration in this deed that he made to you, or mortgage that he had to you upon the property in Ashland, that Mr. Hager's questions referred to awhile ago of the same character?

Objected to.

A. That was also for counsel fees and money loaned—counsel fees past and prospective at that time. I do not care to go into those matters that concerned me alone.

JOHN MCINTYRE.

Q. 28. What was the aggregate amount of interest upon the computation in John Means' account, computed as above stated, up to 1893?

(Objected to for the same reasons.)

A. $598,443.10.

(Answer objected to.)

Q. 29. What does the interest upon his credits aggregate, computed in the same manner up to the same time, 1893?

(Objected to for the same reasons.)

A. $347,738.73.

Q. 36. Did you make a computation upon the account of William Means?

A. Yes, sir.

Q. 37. What was the credit interest upon the debits in said account, computed up to 1893?

(Objected to.)

A. $381,296.46.
Q. 39. What was the debit balance?

(Objected to.)

A. Debit balance was $108,733.24.

(Objected to.)

Q. 56. What is the paper that is now held in your hand? Is it a statement of those balances and amounts?
A. Yes, sir.
Q. 57. Made by you?
407 A. Made by me; yes, sir.
Q. 58. Is that computation correct?
A. Yes, sir; to the best of my ability.
Q. 59. Made by you with care?
A. Yes, sir.

(The statements of interest are offered in evidence.)
(Objected to as incompetent and irrelevant, and also upon the ground that it is a mere summary, not showing the calculations by which the correct results are claimed to have been reached, and, therefore, not possible of verification.)

Q. 60. What is the paper now handed you?
A. This is an interest calculation.
Q. 61. The computations?
A. Yes, sir; showing the date of each item.
Q. 62. And whose account?
A. This is John Means' account.

By Mr. GLIDDEN: Now, I want to say to counsel, that I am perfectly willing to offer that, but I do not want it to encumber the record. I offer it, but do not want it copied in the record.
Mr. MAXWELL: Of course, we think that this testimony is entirely incompetent and irrelevent, but if it is not you certainly cannot put in the statement of aggregate amounts without showing this statement, which will enable the court to test its accuracy.

Q. 63. I will ask you what the paper now handed to you is?
A. This is Mr. William Means' account; the same as the other one.
Q. 64. That is, it is the calculation made by you of the interest?
A. Yes; the different amounts in the account; the months, days and years.
Q. 66. Debits and credits?
A. Debits and credits; yes, sir.

(Computation as to William Means offered in evidence.)
(Objected to as incompetent and irrelevant.)

Q. 67. I will ask you what the paper now handed you is?
A. This is Miss Mary Ann Adams' interest account. It is the

calculations I made of the interest on the different items of account.

408 & 409 (Paper offered in evidence, but the same objection.)

Q. 68. What is that?

A. Calculation of interest I made on Miss Margaret Means' account.

Q. 69. Did you make a similar computation in regard to the account of Mrs. Culbertson?

A. Just the same with regard to the account of Mrs. Culbertson that I did with any of the balance of them.

Q. 70. The same paper that contains the interest computation of Miss Margaret A. Means also contains the interest computation of Mrs. Culbertson's account, does it not?

A. Yes, sir.

410 This act and the acts of Wm. Means and Mary Ann Adams are not to be charged with interest when final settlement is made or at any time.

JOHN MEANS. THOMAS W. MEANS.

Ledger, page 19.

		Dr.			Cr.		
1855.				1855.			
Jan.	22.	To Sinton & Means	4	50 00	Feb. 7. By cash	6	220 00
Feb.	9.	" sundries	7	197 00	1856.		
	9.	" bills receivable	7	7,126 02	Feb. 18. " cash	40	1,200 00
March	15.	" Dugan, Means, H. & Co	12	600 00	Apr. 1. " C. & B. S. P. Co	46	4,000 00
	23.	" A. B. & J. Ellison	13	10 83	July 17. " sundries	83	1,875 00
1856.					" balance		54,325 95
Feb.	22.	" C. & B. S. P. Co	40	4,000 00			
Apr.	1.	" cash	45	1,200 00			
	1.	" C. & B. S. Packet Co	47	1,200 00			
1857.							
M'ch	7.	" Dugan, Means, Hall & Co	70	2,015 00			
May	5.	" Ky. I., C. Mfg. Co. sk	76	2,750 00			
411							
July	17.	" Hall, Means & Co	83	1,500 00			
	17.	" Ashland b'k stock	83	28,000 00			
Nov.	6.	" Bank of Ashland	91	11,362 50			
	13.	" " "	92	359 60			
1858.							
Jan.	5.	" H. Means & Co	100	1,250 00			
				61,620 95			61,620 95
May	18.	To balance		54,335 95	By balance		62,570 06
1859.							
Mar.	1.	" H. Means & Co	148	5,800 00			
		" Bank of Ashland	148	2,100 00			
Mar.	20.	To cash p'd Ky. I., C. Mfg. Co	153	344 11			
				62,570 06			62,570 06
					By balance		63,820 06

				Dr.			Cr.
							63,820 06
1859.							
Aug.	17.	To balance	...	62,570 06	1860.		
	30.	" cash p'd Ky. I., C. Mfg. Co.	162	1,250 00	Jan.	13. By sundries	173	26 50
				63,820 06		Balance	...	64,554 06
								64,580 56
412								
1860.								
Jan.	1.	To balance	...	63,820 06	1860.			
	13.	" T. W. Means	172	760 50	Mar.	22. By Ky. I., C. Mfg. Co. stock	183	2,075 00
				64,580 56	July	18. By Thos. W. Means	191	11 53
					Aug.	8. " Bank of Ashland	193	1,650 00
1860.					1861.			
Jan.	13.	To balance	...	64,554 06	Jan.	9. " Bank of Ashland	202	2,000 00
Mar.	23.	" Bank of Ashland	183	1,200 00		23. " James T. Van Bibber	203	75 00
1861.					May	10. " "	214	80 00
June	12.	" Bank of Ashland	216	286 00	Sept.	13. " Thos. W. Means	221	57 22
	27.	" " "	218	500 00	1862.			
Sept.	13.	" Thos. W. Means	221	210 00	June	30. " Ky. I., C. & Mfg. Co. stock	238	9,000 00
1862.						" Thos. W. Means	238	6 80
Feb.	25.	" Thos. W. Means	230	80 34		" Ky. I., C. & Mfg. Co	238	850 00
June	30.	" Ky. I., C. & M. Co	238	5 72		" Means, Hall & Co. stock	238	5,000 00
1863.								
Jan.	9.	" Bank of Ashland	250	5 33				
		" Thos. W. Means	250	34 50				
			250	19 40				
	17.	" Thos. W. Means	251	21 78				
		" Thos. W. Means	255	100 00				
Mar.	6.	" Bank of Ashland	260	4 55				
Apr.	25.	" Ky. I., C. & Mfg. Co						
413								
			264	100 00		" profit and loss	238	1,000 00
May	9.	To Bank of Ashland	271	160 00			239	2,150 00
Nov.	13.	" sundries	272	1 50	July	11. " Bank of Ashland	250	3 30
Dec.	20.	" Iron bank			1863.			
1864.					Jan.	9. By sundries	"	46 55
July	29.	" Thos. W. Means, April 16	287	14,982 25		17. " Thos. W. Means	250	1,500 00
		" do., May 23	287	16,000 00		" Bank of Ashland	268	9 65
		" do., June 16	"	7,500 00	Sept.	12. " interest		

Dec.	29.	" sundries	294	3,047 10	Oct. 15.	" Iron Bank coupon	269	1 50
					Dec. 20.	" Thos. W. Means	273	47
				94,312 53				25,557 02

No interest shall be charged on this account on final settlement or at any other time.

THOMAS W. MEANS.

JOHN MEANS.

Ledger, page 19.

Dr.					Cr.			
1865.					1864.			
Jan.	5.	To am't forward	...	94,312 53	Dec.	29. By am't forward	...	25,517 02
414								
		" " Means, Kyle & Co.	295	917 75		" " sundries	294	408 50
		" Ashland Bank stock	307	20,400 00	1866.			
		" T. W. Means	310	235 00	March	9. " sundries	314	226 25
Nov.	27.	" Ky. I. C. & Mfg. Co	310	2,053 96	Dec.	31. " ledger page	281	
1866.					1868.			
M'ch	19.	" sundries	314	1,020 00	Feb.	18. " expenses	336	90 00
					1869.			
		Ledger, page 281.			May	31. " Mrs. M. A. Adams	349	6,000 00
Dec.	31.	" Thos. W. Means	321	6,250 00	1870.			
1866.					Aug.	19. " sundries	364	6,600 00
Dec.	31.	To Thos. W. Means	321	5,625 00	1870.			
1868.					Sept.	5. By Wm. Means	365	6,000 00
Feb.	18.	" rents	...	296 23	Nov.	25. " steamboat stock	368	840 00
1869.					1871.			
March	19.	" dividend M. R. M	345	13,125 00	M'ch	22. " Means, Kyle & Co.	372	3,500 00
May	29.	" Bank of Ashland	348	7,000 00	Sept.	30. " Means, Kyle & Co.	374	2,500 00
Nov.	29.	" Ky. I. C. & Mfg. Co	352	772 00	Sept.	30. " Means, Kyle & Co.	377	1,500 00
1870.					1872.			
July	20.	" T. W. Means	363	48 00	Oct.	10. " sundries	395	47,597 00
	"	" bills receivable	363	5,000 00	Dec.	9. " T. W. Means	398	6,310 55
					1873.			
415		" Means, R. & Means	363	1,070 83	Dec.	9. " sundries	4	23,400 00
						" Thos. W. Means	4	80,000 00

			Dr.			
1871.						
Feb.	10.	"	Bank of Ashland	370		840 00
Oct.	3.	"	Bank of Ashland	377		4,000 00
	19.	"	sundries	"		12,058 00
1872.						
Oct.	10.	"	sundries	395		47,597 00
Dec.	9.	"	T. W. Means, Sr	398		11,250 00
	9.	"	Means & Co	"		2,000 00
	16.	"	Ashland National bank	398		2,000 00
1873.						
Jan.	4.	"	Means, Kyle & Co	399		1,600 00
Sept.	1.	"	Means, Kyle & Co	L		38,020 00
July	12.	"	dividend gas Co	3		232 50
	"	"	Mr. Tewksburg	3		636 88
Dec.	9.	"	interest	5		1,326 60
	9.	"	Ashland Nat. bank	...		200 00
416						
1874.						
Jan'y	29.	"	Norton Iron W'ks stock	9		6,000 00
Feb'y	"	"	interest	11		365 41
						286,252 69
			Cr.			
1874.						
March	9.	To	balance	...		58,536 37
Oct.	22.	"	Ashland N. bank	25		1,003 50
'75.						
May	31.	"	interest	35		192 15
Nov.	1.	"	Catlettsburg R. E.	39		1 00
Dec.	29.	"	interest	41		726 56
1876.						
M'ch	29.	"	interest ac	43		890 71
		"	Ashland N. bank	43		1,000 00
Aug.	18.	"	interest	46		27 81
1877.						
Feb.	2.	"	"	52		661 50
		"	A. N. bank	5		17,200 00
		"	taxes	...		27 00
		"	balance	...		58,536 37
						286,252 69
1874.						
Oct.	22.	By	Ashland N. bank	25		1,126 25
Dec.	29.	"	taxes	41		9 15
1876.						
March	29.	"	expenses	43		69 60
1877.						
Feb'y	2.	"	expense ac	52		73 03
'79.						
Feb'y	10.	"	expenses	79		353 75
	22.	"	expenses	80		14 00
April	12.	"	John Means	82		4,361 00
July	1.	"	expense	86		70 75
1880.						
Feb.	23.	"	Ashland N. bank	98		2,230 00

1879.									
March	3.	" interest	81	64 01	April	27.	" Culbertson Means & C	100	2,765 00
	26.	" interest	81	625 00	May	27.	" Culbertson Means & C	103	3 27
417									
April	11.	" sundries	82	1,100 00	June	19.	" Princess furnace	104	
	12.	" Northern iron w'ks	"	400 00	Sept.	4.	" sundries	110	1,339 30
	"	" dividends	"	2,230 00					
	14.	" Culbertson Means & C	83	58 59					
	"	" bills payable	"	850 00					
				68,367 20					12,419 66

No interest shall be charged on this account on final settlement or at any other time.

THOMAS W. MEANS.

JOHN MEANS.

DR. Ledger, page 281. CR.

1879.									
July	1.	To am't brought forward	...	68,367 20			By am't brought forward	...	12,419 66
	"	" expenses	86	154 00			balance to 380 pages	...	78,000 00
1880.									
Feb'y	4,	" profit & loss	97	2,230 00					
	18.	" " "	"	400 79					
	23.	" interest on Peter Anfelt's last note	98	42 67					
April	9.	" Ashland N. bank	100	8,200 00					
418									
July	6.	" Norton Iron W'ks stock	105	6,000 00					
	"	" Ky. I. C. & Mfg. Co. stock	"	5,000 00					
Aug.	2.	" interest	107	25 00					
				90,419 66					90,419 66

Advances—John Means.

Dr. Ledger, page 380. Cr.

1880.						1881.			
Sept.	4.	To balance from page 281		78,000 00	Feb'y	15.	By Means, Russell & Means	115	5 00
1881.							" " expenses	"	5 00
Feb'y	15.	" A. N. bank	116	7 25	Sept.	8.	" bills receivable	119	20,000 00
Aug.	1.	" Sec. Nat. Bank Ironton	118	50,000 00	Dec.	25.	By sundries	126	30,146 37
Nov.	8.	To sundries	125	1,014 01	1882.				
Dec.	25.	" A. N. bank	126	600 00	April	24.	" expenses	129	105 80
1882.						28.	" Ashland Nat. b'k	129	1,361 84
June	21.	" Sec. Nat. bank	133	3,000 00	Oct.	17.	" expense	135	8 00
	27.	" sundries	134	15,000 00	1883.				
419					Jan.	17.	" "	138	1 75
1883.					1884.				
Feb.	20.	" expense	139	9 75	May	14.	" balance		100,000 00
1884.									
May	14.	" bills receivable	148	4,000 00					
				151,631 01					151,631 01
1884.					1887.				
May	14.	To balance		100,000 00	July	2.	By sundries	170	400 00
1887.					Oct.	1.	" bank	174	225 00
June	4.	" A. N. bank	179	400 00					
Sept.	29.	" interest	193	225 00					

Current Account—John Means.

Dr. Ledger, page 243. Cr.

1888.					1888.				
Feb.	16.	To sundries jo-rnal 2	179	125,911 74	Feb.	17.	By sundries jo-rnal 2	179	12,500 00
April	21.	" bank	184	1,500 00		20.	" sundries	179	16,300 00
	21.	" bills receivable	185	30,800 00		22.	" bills receivable	180	125,911 74

July	14.	" interest	188	25 50	M'ch	6.	" Mt. Auburn C. R. bonds	181	2,000 00
					July	14.	" bank	188	1,525 50
				158,237 24					158,237 24
1888.					1888.				
Aug.	17.	To bank	189	5,000 00	Aug.	30.	By Wm. Means' current ac	189	5,000 00
Nov.	5.	To bills payable	193	95,000 00	Nov.	16.	By bills receivable	193	75,000 00
Dec.	20.	" bank	196	84 40		17.	" bank	194	1,000 00
		" bills receivable	196	6,690 00	Dec.	8.	" Wm. Means' current ac	195	504 00
	22.	" sundries	196	6,419 60		18.	" bills payable	195	25,000 00
						20.	" bank	196	6,690 00
				108,194 00					108,194 00
1889.					1889.				
Jan.	21.	To bills receivable	198	27,510 00	Jan.	11.	By Roan Mountain Steel and Iron stock	198	27,510 00
	26.	" do.	200	2,625 00		26.	" bank	199	2,625 00
	29.	" do.	200	1,115 00		29.	" bank	200	1,115 00
April	29.	" do.	202	1,115 00	April	29.	" bank	202	1,115 00
1890.					Feb.	11.	" sund	205	75,000 00
Feb.	11.	" do.	205	75,000 00					

421

WM. MEANS.

DR. Ledger, page 40. CR.

1855.					1855.				
Febr'y	6.	To Dugan & Mackoy	7	50 00	Feb.	13.	By Dugan & Mackoy	8	50 00
March	1.	To Dugan, Means, Hall & Co	11	500 00	1858.				
Dec.	24.	" " " "	35	200 00	May	17.	By T. W. Means	122	500 00
	28.	" cash	36	50 00			" balance		3,531 12
1856.									
Jan.	15.	" Sinton & Means	37	50 00					
Feb.	7.	" Dugan, Means, Hall & Co	39	500 00					
	27.	" " "	41	500 00					
	27.	" " "	41	500 00					

Dr.					Cr.			
1857.								
Dec.	12.	" " "	96	500 00				
	18.	" cash	97	500 00				
	18.	" "	97	704 12				
1858.								
Jan.	21.	" "	104	10 00				
Feb.	8.	" "	106	12 00				
May	17.	" "	122	5 00				
422				4,031 12				4,031 12
May	18.	To balance	...	3,531 12	Aug.	1.	By balance	3,531 87
June	25.	" T. W. Means	124	75				
				3,531 87				3,531 87
Aug.	1.	To balance	...	3,531 87	1858.			
Sept.	21.	" T. W. Means	129	50 00	Aug.	14.	By T. W. Means	128 250 00
Oct.	11.	" " "	131	10 00	Oct.	29.	" " do.	133 250 00
Nov.	6.	" " "	133	5 00	Nov.	16.	" " do.	134 60 00
Dec.	18.	To T. W. Means	139	10 00	Dec.	29.	" " do.	140 166 67
	23.	" " "	139	10 00	1859.			
	27.	" " "	140	8 00	March	29.	By T. W. Means	151 250 00
1859.					May	10.	By W. W. Culbertson	155 30 00
March	29.	" Arch. Means	151	10 00	June	30.	" T. W. Means	159 250 00
April	27.	" T. W. Means	154	10 00	Aug.	17.	" balance	2,567 20
May	25.	" " "	156	5 00				
June	15.	" " "	158	20 00				
July	4.	" " "	159	7 00				
	12.	" " "	159	73 50				
	21.	" " "	160	9 00				
423	27.	" " "	160	10 00				
	30.	" " "	160	29 50				
Aug.	6.	" " "	160	10 00				
	10.	" " "	160	15 00				
				3,823 87				3,823 87

Aug.	17.	To balance		2,567 20	1859. Sept.	19.	By T. W. Means	164	13 75
	27.	To cash	162	10 00	Oct.	1.	" " do.	165	250 00
Sept.	1.	" "	162	10 00		8.	" " do.	165	66 35
	24.	" "	164	10 00			" balance		2,274 51
Dec.	15.	" taxes	170	7 41					
				2,604 61					2,604 61

424 No interest shall be charged on this account on final settlement or at any other time.

THOMAS W. MEANS.

Advances—Wm. Means.

Ledger, page 40.

Dr.					Cr.				
1860.					1860.				
Jan'y	1.	To balance		2,274 51	Jan.	28.	By R. R. Culbertson	175	12 00
	17.	" paid Ohio furnace	174	45 00	Feb.	28.	" T. W. Means	178	250 00
Feb'y	2.	" 2 bot. bals-m	176	1 60	May	30.	" " do.	184	13 24
	20.	" cash	177	5 00	April	13.	" " do.	184	50 00
	28.	" T. W. Means	178	36 00		24.	" " do.	185	150 00
March	1.	" " do.	178	5 00			Ledger, page 220.		
	22.	" " do.	183	5 00	1861.				
	31.	" " do.	184	10 00	May	31.	" Wm. Means	220	175 00
April	17.	" " do.	185	10 00	1865.				
		Ledger, page 220.			Feb.	17.	" Bank of Ashland dividend No. 11	298	170 00
Sept.	17.	" Bank of Ashland	220	300 00		17.	" Bank of Ashland dividend No. 12	298	17 00
Sept.	19.	" " "	195	1,700 00		17.	" Bank of Ashland dividend No.9&10	298	340 00
Oct.	11.	" " "	196	500 00	1867.				
Dec.	4.	" " "	198	3,417 76	Feb.	7.	" T. W. Means	323	32 92
1863.									
July	11.	" Bank of Ashland	265	3,400 00					

425

1864.					1869.				
July	29.	" T. W. Means	287	24,082 25	Oct.	9.	" Means, Kyle & Co., stock	350	99,400 00

		Dr.		
	29.	" " "	287	1,000 00
1865.				
Jan'y	5.	" Means, Kyle & Co.	295	10,917 75
Feb.	16.	" T. W. Means	298	32 92
July	—.	" taxes Scioto Co.	305	65 84
Dec.	11.	" T. W. Means	321	62 50
1867.				
Feb.	—.	" " "	321	25,625 00
	7.	" " "	323	1,000 00
1868.				
July	27.	" Means, Kyle & Co.	340	5,600 00
1869.				
Oct.	9.	" 2d Nat. B'k of Ironton	352	6,000 00
	25.	" Means, Kyle & Co.	352	27,133 00
1870.				
April	9.	" Bank of Ashland	358	10,000 00
426				
		Cin. & Big Sandy P. Co. dividend, No. 4	358	4,725 00
	27.	" Cin. real estate	359	2,700 00
May	10.	" Mary A. Adams	361	4,165 44
	15.	" Means, Kyle & Co.	361	1,500 00
Aug.	25.	" Sec. Nat. bank	365	6,131 00
Sept.	1.	" Means, Kyle & Co.	365	2,000 00
	5.	" Jno. Means	365	6,000 00
	23.	" E. B. Willard	367	2,016 19
	23.	" sundries	368	977 91
Nov.	24.	" Means, Kyle & Co.	368	10,000 00
	8.	" Sec. Nat. bank	368	2,000 00
Dec.	16.	" Means, Russell & Means	368	10,000 00
1871.				
Feb.	2.	" Sec. Nat. bank	370	5,600 00
	10.	" Bank of Ashland	370	6,984 00
1872.				
Dec.	9.	" T. W. Means, Jr.	398	11,250 00
	9.	" Means & Co.	398	2,000 00

		Cr.		
1870.				
April	9.	" Mrs. Jane Culbertson	359	4,725 00
Sept.	23.	" interest	369	1,378 65
1871.				
Feb.	10.	" do.	371	2,429 29
1872.				
Dec.	9.	" T. W. Means	398	6,310 55
1873.				
Dec.	9.	By T. W. Means	4	80,000 00

427		16.	" Ashland Nat. bank	398	2,000 00	
	1873.					
	Jan'y	4.	" Means, Kyle & Co.	398	1,600 00	
		27.	" Ashland Nat. bank	400	750 00	
					$211,816 19	195,606 65

No interest shall be charged on this account on final settlement or at any other time.

THOMAS W. MEANS.

Advances—Wm. Means.

	1874.						
	Jan.	29.	To am't forward		221,816 19	By am't forward	195,606 65
		29.	" Norton Iron Works stock	9	6,000 00	" balance	46,409 54
	Feb.	17.	" Ashland Nat. bank	12	3,000 00		
	March	9.	" U. S. 10-40 bonds and premium	13	21,200 00		
					242,016 19		242,016 19
428							
	1874.						
	M'ch	9.	To balance		46,409 54		
		24.	" Norton Iron Works stock	100	1,000 00	By balance	90,066 00
	1880.						
	July	6.	" Norton Iron Works stock	105	6,000 00		
		"	" Ky. Iron, Coal & Mfg. Co. stock	105	5,000 00		
	Sept.	4.	" Ashland National bank	110	590 46		
					59,000 00		59,000 00
	Sept.	4.	To balance		59,000 00		
	1881.						
	April	29.	" steamboat stock	117	6,300 00		
	1882.						
	June	27.	To sundries	134	30,000 00		
	1884.						
	May	14.	" bills receivable	148	4,000 00		
		"	" Ashland National bank		700 00		

Ledger, page 223.

			Dr.				Cr.	
1888.								
Feb.	13.	To Ashland National bank	178	1,900 00	Feb.	13.	By steamboat stock	179	6,900 00
	20.	" Ashland National bank	180	1,000 00	April	2.	" Ky. Iron C. Mfg. Co	183	5,000 00
	24.	" Ashland National bank	181	1,000 00	July	18.	" Ashland National bank	188	350 00
April	2.	To bank	183	1,500 00	July	28.	By Ashland Nat. b'k	188	480 00
	21.	" "	184	1,000 00	Aug.	31.	" " " "	190	160 00
May	28.	" "	186	1,386 36	Sept.	5.	" " " "	"	160 00
June	16.	" "	186	880 11		7.	" " " "	"	350 00
July	13.	" "	187	1,450 00		12.	" " " "	"	315 85
	28.	" "	188	500 00		28.	" " " "	191	178 15
Aug.	10.	" "	189	195 84	Oct.	24.	" bills receivable	192	12,441 67
	17.	" "	189	1,369 17		29.	" "	193	2,100 00
	30.	" sundries	189	5,041 67	Nov.	16.	" " "	"	497 13
	31.	" bank	189	195 84		29.	" Ashland National bank	194	881 67
Sept.	25.	" "	191	7,400 00		27.	" bills receivable	194	1,620 00
	29.	" "	192	471 78	Dec.	10.	" " "	195	2,713 88
Oct.	20.	" "	192	2,100 00		22.	" Margaret A. Means	196	514 32
	24.	" "	192	197 13	1889.				
Nov.	6.	" "	193	300 00	M'ch	8.	" Ashland National bank	200	10,275 00
	19.	" "	193	1,620 00					
430									
	23.	" bills receivable	194	881 67					
Dec.	3.	" bank	194	2,713 88					
	8.	" Jno. Means	195	504 00					
	14.	" bank	195	514 00					
	20.	" "	196	785 98					
1889.									
M'ch	8.	" bills receivable	200	10,275 00					

Mrs. Mary Ann Adams.

Ledger, page 16.

			Dr.	
1862.				
Nov.	16.	To cash paid lawyer	244	150 00
Aug.	4.	" Thos. W. Means	266	855 00

	4.	" sundries	267	101 58
Sept.	14.	" Thos. W. Means	268	61 00
Nov.	13.	" Thos. W. Means	270	252 00
	1864.			
M'ch	10.	" Thos. W. Means	276	374 40
May	2.	" 2d Nat. bank	279	600 00
	9.	" Cin. house	280	5 00
June	23.	" 2d Nat. bank	282	350 00
Dec.	29.	" John Means	294	113 00
	1865.			
Jan.	5.	" Wm. Means	295	150 00
	14.	" T. W. B. Ironton	296	50 00
431				
April	10.	" T. W. Means	301	300 00
May	2.	" attorney fees	302	764 00
Aug.	8.	" Second N. B. Ironton	306	75 00
July	17.	" paid Thos. McCauslin	"	300 00
Aug.	26.	" Arch. Means	307	69 85
		" do.	"	200 00
		" do.	"	598 71
	1865.			
Oct.	8.	" 2d Nat. bank	310	100 00
Nov.	16.	" expense to Ports	310	61 00
	1866.			
June	21.	To 2nd Nat. bank	317	250 00
July	23.	" do. do.	"	100 00
	1867.			
M'ch	29.	" sundries	324	10,562 05
May	17.	" cash Dec. 3, '66, April 4, '67	325	200 00
	30.	" 2d Nat. bank 23d	326	80 00
April	5.	" draft on N. Y.	324	100 00
July	17.	" 2d Nat. bank	330	180 00
				17,003 04

432 No interest shall be charged on this account on final settlement or at any other time.

THOMAS W. MEANS.

Mrs. Mary Ann Adams.

Ledger, page 287.

		Dr.			Cr.		
1867.					1871.		
Sept.	—.	To am't bro't forward	...	$17,003 04	May 10.	By 2nd Nat. bank	359	16 30
		" Thos. W. Means	332	105 00	" "	" Wm. Means	361	4,165 44
Dec.	19.	" Sec. Nat. B'k Ironton	334	250 00	Aug. 20.	" 2nd Nat. bank	364	10,140 62
"	20.	" do. do.	"	6 10	" "	" " " "	365	5 00
1868.					1872.			
Mar.	10.	" " "	337	125 00	Mar. 18.	" sundries	384	4,940 67
June	10.	" " "	338	180 00	April 25.	" interest ac.	388	1,606 38
Dec.	1.	" " "	341	225 00	" "	" bills payable	388	10,145 62
1869.					Oct.	10. " Jno. Means	395	600 00
March	1.	" " "	344	75 00	Dec.	9. " T. W. Means, Jr	398	6,310 55
Mar.	23.	" bills receivable	346	14,027 00	1873.			
May	17.	" 2nd Nat. Bank Ironton	347	175 00	Dec.	9. " Thos. W. Means	4	80,000 00
"	31.	" Jno. Means	349	6,000 00				
Aug.	9.	" 2nd Nat. B'k of Ironton	350	100 00				
433								
Aug.	30.	" 2nd Nat. B'k of Ironton	350	100 00				
Nov.	3.	" T. W. Means	...	150 00				
1870.								
Jan'y	7.	" 2nd Nat. Bank Ironton	354	242 16				
May	10.	" 2nd Nat. Bank Ironton	359	235 00				
"	10.	" bills payable	361	4,165 44				
July	19.	" Means, Kyle & Co., Fox	362	142 16				
"	5.	" 2nd Nat. bank	363	400 00				
Aug.	20.	" bills payable	365	10,145 62				
Sept.	23.	" 2nd Nat. bank	365	200 00				
"	"	" " " "	365	350 00				
Nov.	8.	" " " "	368	200 00				
Dec.	20.	" " " "	369	200 00				
1871.								
Jan'y	18.	" Means, Kyle & Co.	369	281 25				
May	6.	" 2nd Nat. bank	373	350 00				
July	24.	" Means, Kyle & Co.	375	213 75				

434

Oct.	4.	" 2nd Nat. bank	379	600 00	
"	30.	" Bank of Ashland	380	100 00	
1872.					
Jan'y	16.	To 2nd Nat. bank	382	290 00	
Feb.	21.	" " " "	383	1,100 00	
Mar.	9.	" " " "	384	175 00	
"	15.	" " " "	384	5,500 00	
"	20.	" " " "	386	10,000 00	
May	9.	" sundries	388	2,600 00	
June	18.	" Means, Kyle & Co.	390	50 00	
Oct.	7.	" Ashland Nat. b'k	395	200 00	
Nov.	8.	" 2nd Nat bank	396	75 00	
Dec.	9.	" T. W. Means, Jr.	398	11,250 00	
"	9.	" Means & Co.	398	2,000 00	
"	16.	" Ashland Nat b'k	398	2,000 00	
1873.					
Jan'y	4.	" Means, Kyle & Co	399	1,600 00	
"	11.	" 2nd Nat. bank	399	150 00	
April	19.	" Ashland Nat. b'k	402	5,000 00	
"	19.	" 2nd Nat. bank	403	400 00	
"	24.	" Means & Co.	402	5,000 00	
May	14.	" Ashland Nat. b'k	403	3,600 00	
				106,336 52	117,930 56

435 No interest shall be charged on this account on final settlement or at any other time.

THOMAS W. MEANS.

MRS. MARY ANN ADAMS.

Ledger, page 287.

1873.		DR.			CR.	
June	2.	To amount forward	106	336 52.	By amount forward	117,930 58
	2.	" Sec. Nat. bank	404	450 00	" balance	12,827 78
Aug.	5.	" Means, Kyle & Co.	1	77 00		
Dec.	9.	" John Means	4	11,700 00		

	Dr.			Cr.		
	" T. W. Means	4	374 84			
1874.						
Jan'y 12.	" Sec. Nat. bank	7	840 00			
1873.						
Dec. 9.	" M. A. Means.		4,400 00			
1874.						
Jan'y 29.	" interest	8	580 00			
	" Norton Iron Works stock	9	6,000 00			
			130,758 36			130,758 36

436 *Advances—Mrs. Mary Ann Adams.*

	Dr.		Ledger, page 321.		Cr.		
March 9.	To balance		12,827 78	Aug. 22.	By Sec. Nat. bank	22	640 00
12.	" Sec. Nat. bank	15	300 00	1877.			
Aug. 18.	" T. W. Means	20	800 00	Mar. 28.	" T. W. Means	54	350 00
15.	" Means, Kyle & Co.	22	374 50	Oct. 27.	" Means, Kyle & Co	91	1,600 00
1875.					" balance		51,410 00
Nov. 17.	Covington R. E	44	1,500 00				
1876.							
May 13.	To error	44	10 00				
Aug. 18.	" Ashland National bank	46	1,500 00				
1877.							
Mar. 26.	" Means, Kyle & Co. tax	53	317 60				
27.	" Sec. Nat. Bank stock	54	1,250 00				
Aug. 21.	" Means, Kyle & Co. tax	59	317 60				
1879.							
May 24.	" Means, Kyle & Co., stock	85	20,000 00				
July 1.	" expense	86	100 00				
437							
Aug. 2.	" R. R. bonds	88	500 00				
1880.							
Feb. 23.	" " "	98	2,000 00				

Mar.	24.	" Norton Iron Works stock	100	1,000 00	
July	6.	" Norton Iron Works stock	105	6,000 00	
	"	" Ky. Iron Co. Mfg. C. stock	...	5,000 00	
Sept.	4.	" John Means	...	200 52	
				54,000 00	
1880.					
Sept.	4.	To balance	...	51,410 00	
1881.					
April	26.	" A. N. bank	116	4,627 90	
		" Sec. Nat. Bank Ironton	116	800 00	
	29.	" T. M. Adams	117	2,475 00	
Aug.	3.	" Sec. Nat. bank	118	4,590 00	
Sept.	22.	" Ashland Nat. bank	120	900 00	
	"	" Sec. Nat. bank	120	39,632 55	
438					
1884.					
May	14.	" A. N. bank	148	154 55	
				104,590 00	
May	14.	To balance	...	100,000 00	
1889.					
Aug.	2.	" A. N. bank	170	7,350 00	

No interest to be charged on this acc't at any time.

					54,000 00
1881.		Cr.			
Sept.	23.	By Sec. Nat. bank	120	4,590 00	
	"	balance	...	100,000 00	
					104,590 00
1889.					
Aug.	2.	By sundries	...	7,350 00	

THOMAS W. MEANS.

Advances—Margaret A. Means.

Ledger, page 320.

Dr.					Cr.				
1872.					1872.				
Oct.	24.	To Sec. Nat. Bank stock	395	12,500 00	Nov.	10.	By sundries	396	600 00
Mar.	30.	" Means, Kyle & Co	397	12,000 00	Dec.	9.	T. W. Means	398	6,310 57
Dec.	9.	" T. W. Means, Sr	398	11,250 00	1873.				
	"	" Means & Co	"	2,000 00	Dec.	9.	Thos. W. Means	4	80,000 00
	16.	" Ashland Nat. b'k	"	2,000 00		"	M. A. Adams	5	4,400 00
1873.						"	balance		4,331 35
Jan.	4.	" Means, Kyle & Co	"	1,600 00					
439									
April	19.	" Ashland Nat. b'k	402	20,000 00					
		" Sec. Nat. bank	403	2,256 25					
May	14.	" Ashland Nat. b'k	"	4,000 00					
April	24.	" Means & Co	402	5,000 00					
May	14.	" Sec. Nat. bank	404	4,720 00					
Dec.	9.	" John Means	4	11,700 00					
		" Thos. W. Means	"	35 67					
1-74.									
Jan.	29.	" interest	8	580 00					
	"	" Norton Iron Works stock	9	6,000 00					
				95,641 92					95,641 92
Mar.	9.	To balance		4,331 35	Oct.	27.	By Means, Kyle & Co	91	1,600 00
Oct.	15.	" bills receivable	25	4,000 00		"	balance		45,400 00
1875.									
Nov.	17.	" Covington R. E	39	3,000 00					
1876.									
Aug.	18.	" sundries	46	500 00					
Oct.	23.	" T. W. Means	50	200 00					
440									
1879.									
May	24.	" Means, Kyle & Co. stock	85	20,000 00					

1880.							
Mar.	24.	" Norton Iron Works stocks	100	3,000 00			
July	6.	" Norton Iron Works stocks	105	6,000 00			
	"	" Ky. Iron, C. Mfg. Co. stock	...	5,000 00			
Sept.	4.	" John Means	110	968 65			
				47,000 00			47,000 00
Oct.	27.	To balance	...	45,400 00			
1881.							
Aug.	3.	" Sec. Nat. bank	118	5,724 00	Sept.	23.	By Sec. Nat. bank ... 121 5,724 00
1882.					May	14.	" balance ... 100,000 00
June	27.	" sundries	134	32,000 00			
1883.							
July	26.	" Means, Kyle & Co	142	551 01			
441							
1884.							
May	14.	" bills receivable	148	22,000 00			
	"	" A. N. bank	"	48 99			
				105,724 00			105,724 00
1884.							
May	14.	To balance	...	100,000 00	Jan.	9.	By bank, journal 2 ... 177 1,400 00
1888.							
Jan.	9.	" bank	176	1,400 00			

Current Account--Margaret A. Means.

Dr.					Ledger, page 295.				Cr.
1888.					1888.				
Feb.	16.	To bills payable, journal 2 ...	179	7,537 50	Feb.	16.	By John Means, current account ...	179	7,537 50
	20.	" bills payable ...	"	5,000 00		17.	" A. N. bank ...	179	5,000 00

Dr.					Cr.				
	21.	" bills payable	180	18,853 13		22.	" bank	180	18,853 13
Apr.	9.	" steamboat stock	184	6,900 00	Apr.	19.	" bills payable	184	6,900 00
442									
May	19.	" bank	185	345 00	May	19.	" bank	185	345 00
July	13.	" bank	187	345 00	July	12.	" bank	189	345 00
Dec.	23.	" sundries	196	4,623 99	Dec.	22.	" John Means	196	4,623 99
1889.					1889.				
April	8.	" Ashland Nat. b'k	201	455 00	Apr.	8.	" bills payable	201	455 00

No interest shall be charged on this account on final settlement or at any other time.

THOMAS W. MEANS.

Advances—Mrs. Jane Culbertson.

Ledger, page 280.

Dr.					Cr.				
1866.					1871.				
Sept.	18.	To Ashland Nat. bank	318	6,800 00	May	5.	By T. W. Means	372	10 00
Nov.	22.	" J. T. Larkin & Co	318	500 00	1872.				
1867.					Dec.	9.	" T. W. Means	398	6,310 55
July	6.	" Ashland Nat. Bank stock	328	10,200 00	1873.				
1869.					Dec.	9.	" T. W. Means	4	80,000 00
Nov.	23.	" bank stock	346	5,032 00			" balance		118,965 80
443									
May	31.	" Ky. Iron Co. Mfg. Co	349	5,000 00					
June	18.	" sundries	"	5,649 00					
July	26.	" Sec. Nat. bank	350	900 00					
Nov.	1.	" " " "	352	2,000 00					
"	29.	" Ashland bank	353	3,000 00					
1870.									
April	9.	" sundries	359	13,725 00					
June	6.	" Ashland bank	362	5,000 00					

Aug.	9.	" " "	364	500 00
"	18.	" " "	"	1,500 00
"	8.	" Sec. Nat. bank	344	600 00
Sept.	24.	" B'k of Ashland	366	3,200 00
1871.				
Feb'y	10.	" " "	370	10 00
1872.				
July	17.	" " "	394	484 00
Aug.	22.	" " "	"	484 00
Nov.	8.	" Sec. Nat. bank	396	500 00
Dec.	9.	" T. W. Means	398	11,250 00
"	9.	" Means & Co.	"	2,000 00
"	16.	" Ashland Nat. B	...	2,000 00

444

1873.				
Jan.	4.	" Ky. Iron Co. & Mfg. Co.	399	1,600 00
Mar.	18.	" Means & Co.	401	2,219 85
April	19.	" Ashland Nat. B	402	5,000 00
Dec.	9.	" T. W. Means	4	10,132 50
1874.				
July	29.	" Norton Iron works	9	6,000 00
				105,286 35

Jan.	—.	To balance	...	18,965 80
April	1.	" Big Sandy Pack. Co.	16	1,200 00
"	11.	" Ashland Nat. B	17	1,500 00
1878.				
Sep.	16.	" Culbertson, Means & Co.	86	206 91
1879.				
July	2.	" Culbertson, Means & Co.	"	27,683 21

				105,286 35
1879.				
July	2.	By Culbertson, Means & Co.	...	19,946 00

445 CHAS. W. BAKER, called for complainants, being by me first duly sworn, testified as follows:

Direct examination by Mr. GLIDDEN:

Q. 1. Mr. Baker, you are an attorney practicing at this bar, and have been for a number of years?

A. Yes, sir.

Q. 2. State whether you were at Ashland, Ky., as one of the attorneys for William Means, at the time that this receipt for one hundred and thirty-six thousand dollars and some odd cents, that is spoken of, was signed by William Means?

A. I was at Ashland with Mr. Williams when the receipt for some amount, quite large, was signed. I have forgotten the exact amount.

Q. 3. State what the purpose was of executing that receipt, at that time, by William Means, to the executors, if you know?

(The statement of purpose is objected to as irrelevant and incompetent, and the question should call for what was said and done on that occasion.)

A. Well, I can only tell you that I was sent for by Mr. Means, and I think Mr. Williams, and from what I understood the situation was, that that led to my being sent for. As to why what was done, was done, I can only give you my impression of the situation as I was then advised, existed. I can tell you if that is what you wish to know.

Q. 4. Answer it in your own way?

A. Well, I was advised by Colonel Williams and Mr. Means of an apprehended attempt on the part of the agent of the Metropolitan bank, or whoever was in charge of that defunct corporation, at that time, to garnishee or attach money that might be coming to him from his father's estate. I think before that time there have been some consultations with me at my office, either by Mr. Williams or Mr. William Means, or both. I think that was what took me up to Ashland. I am not sure, but what I had been sent for some time before, but I was very busy, and had been in taking some testimony in a case that I was engaged in and could not get away; I don't exactly recollect whether I was telegraphed for or written for, or what; but I went to Ashland with that idea in my mind.

Q. 5. State if you were aware, at that time, of any threatened attack by Mrs. William Means and the family of William Means.

446 A. Well, I don't know as I knew of any threatened attack. I think, though, that any conversation with Mr. William Means and Colonel Williams, that that was suggested. I could not say whether or not that was before or after any proceeding had been begun in Xenia, or not.

Q. 6. Do you remember of any interview by me, as the representative of the family, that you had at your office shortly prior to your going up there?

A. Well, I don't call it to mind in the sense that I have a distinct

recollection of it. I have had several talks with you in regard to it, and that I had before this action was begun, but I do not recollect any specific time when you came to me, and made any statement concerning it, except I think I knew in a general way that Mrs. Means was rather in the mind to be hostile.

Q. 7. Mr. Baker, from the arrangement of giving this receipt to the executors for the purpose, and with the intent to place the property—his interest in that estate under cover, in their hands, as against his creditors, and as against claims of Mrs. Means—to protect it from the family.

(Objected to as irrelevant and incompetent, and to any statement as of purpose and intent separate from evidence as to what was said, or done, or took place.)

A. Well, I do not know as I could answer that categorically, Mr. Glidden—there was an idea—at least, I can only tell you how I recollect that I was impressed—that his creditors were moving, or about to move on whatever interest he might have had in that estate. I think that some suits had been brought here. I think Robert Howe had brought one. There were some matters pending in their own local courts. I think there was matter of the differences with his wife, but I recollect that would move Means to go, there was the idea, that whatever interest he had in his father's estate was perhaps about to be subjected to some sort of assault from his wife and creditors, and that whatever there was there, ought to be—I was about to use the phrase "kept in the family," but I do not know as that expresses the idea exactly. Now, this is my impression; that I was of the idea that money had been advanced to him by his blood relatives, and that he ought to put his affairs, or interest in that estate, in such shape that it could not be reached by his creditors, and possibly there was the other idea, that if his sisters, or otherwise had advanced money to him, that they should be secured as far as possible; at all events, that outsiders should
447 not lay hands on whatever interest he might have in his father's estate. Now, that was the other idea, that his wife was about to get after him, and my recollection is that the feeling, at that time was perhaps hostile to her. Now, in stating this I can only state what I had in my mind as to the situation of affairs when I went to Ashland.

Q. 8. Do you remember, Mr. Baker, whether, at that time, anything was said as to the amount of the receipt, as to whether it was given for the correct amount or not?

A. I do not recollect about that. I could not tell you. I could not tell you today what the ground of that receipt was. I may have drawn it; I am not sure.

Q. 9. I do not think you got the meaning that I intended to convey by the question. The question I intended to convey was: Was there anything, at that time, said to you whether it would be of consequence, whether the receipt, being a receipt, represented the correct amount, or whether he was bound by the amount of the receipt?

A. Said between Mr. Means and myself?

Q. 10. Yes, sir; at that time, about whether he was bound by the amount of the receipt, or not.

A. Well, I may have said to Mr. William Means what I no doubt thought, at that time, that it is a well-settled rule of law, that a man who gave an administrator a receipt for more money than he got, did not estop himself from afterwards claiming the balance that was due him. I recollect advising Mr. William Means to that effect, and I did not suppose, and did not think that he was not seriously claiming that one dealing with a trustee, would put himself in such position, after having only received a part of what was coming to him his receipt would prevent him from receiving the balance. I think I advised Mr. William Means that the question of the amount of receipt was not material in an adjustment with his brother and sisters.

Q. 11. At that time, did you know what the provision of the will of Thomas W. Means was in regard to advancements?

A. Well, the best of my recollection is that I did not. That is the best of my recollection now. I don't think I had ever been advised, or bothered my head, because I had never been consulted in regard to it, but I am not sure as to that.

(The deed of trust from William Means to his family is offered in evidence, marked Exhibit —, copy of which is as follows:

448 Know all men by these presents that William Means in consideration of one dollar and in execution of the agreement by him made in the lifetime of Thomas W. Means and in compliance with the terms of the decree of the Greene county Ohio common pleas court in that behalf made and entered, to him paid by Benjamin R. Cowen, Evan F. Williams and A. F. Frazier trustees—does hereby give, grant, assign, transfer and convey to Benjamin R. Cowen, Evan F. Williams and A. F. Frazier, trustees, all the interest of the said William Means in the estate of the late Thomas W. Means, either as heir-at-law or as devisee under the will of said Thomas W. Means, and including real estate and personal property and rights of every kind.

And all the estate title and interest of the said William Means legal or equitable in and to the same.

To have and to hold the same with the appurtenances to the only proper use of the said Benjamin R. Cowen, Evan F. Williams and A. F. Frazier, trustees, and their successors in the trust forever, subject however, to the terms, limitations and restrictions and for the purposes of the trust recited in said decree of the Greene county common pleas court in case No. 8254 on the calendar of said court.

In witness whereof the said William Means has hereunto set his hand and seal this 26th day of December, A. D. 1891.

WILLIAM MEANS. [SEAL.]

Signed and acknowledged in the presence of us—
Witness:
H. A. GILLESPIE.
A. B. WILSON.

THE STATE OF TENNESSEE, }
County of Lincoln. }

Be it remembered that on the 26th day of December, in the year 1891, before me the subscriber a clerk of the county court within and for said county, personally came William Means, the grantor in the foregoing deed, and acknowledged the signing thereof to be his voluntary act, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my official seal the day and year aforesaid.

E. S. WILSON,
Clerk of Lincoln County Court.

COMMONWEALTH OF KENTUCKY, }
Boyd County, } *ss:*

I, G. F. Friel, clerk of the county court, within and for the county and State aforesaid, do hereby certify that this instrument of
449 writing was lodged for record this 19th day of January, A. D. 1892, at 3 o'clock p. m., and duly recorded in Deed Book (19) on page 418.

G. F. FRIEL,
Clerk of Boyd County Court, Ky.

No. 158. I. Ex. C. 1, 26, '92. Rec'd and recorded April 27, 1892. Recorded in Records of Deeds, vol. 50, page 563.

FRANK L. SIKES, *Recorder.*

William Means to—trust deed—B. R. Cowen and others. Rec'd March 3, 3 p. m., 1892. Recorded March 7, 1892, in vol. 53, p. 327, of Deeds, Lawrence Co., O.

P. T. GILLETT, *Recorder.*

COMMONWEALTH OF KENTUCKY, }
Boyd County, } *ss:*

I hereby certify that this instrument of writing was lodged for record this 19th day of January, A. D. 1892, at 3 o'clock p. m., and duly recorded in vol. 19 of Deeds on page 418.

G. F. FRIEL, *Clerk.*

Tax and fees, $2.00.
Received payment,

G. F. FRIEL, *Clerk.*

Transfer unnecessary. G. C. Varmum transferred.

FILMORE MUSSER, *E. Audt.*

Received payment,

G. F. FRIEL, *C. B. C. C.*

Cross-examination by Mr. MAXWELL:

X Q. 12. Were you at Ashland more than once in connection with this matter, Mr. Baker?

A. I think but once.

X Q. 13. Were you there when William Means signed a receipt

which was given by him to the administrators, to Thomas W. Means?

A. Well, yes, I think so, I think that was the instrument. I have not changed my mind in the slightest degree about any of these, but I think that is it.

X Q. 14. You say, tried to go there. You had been informed that an attack was proposed by Mrs. Means—an attack for what?

A. Well, I did not put it quite that way. My impression is that somehow I had heard about the trust that was claimed to
450 have been engrafted upon his share of his father's estate, in favor, I think, of his wife and daughter—I do not know how else to describe him. I think I was advised at that time that the personal relations of Mr. Means and Mrs. Means were not agreeable, and that she possibly contemplated some litigation. How I got that information, or when, I cannot tell you. I do not know how much of that I had gotten before this time I went to Ashland. I know that when I was in Ashland the relations between Mr. and Mrs. Means were not as agreeable as it had been agreeable.

X Q. 15. Who had advised you?

A. Well, I think Colonel Williams had advised me of that—maybe Mr. Glidden mentioned it. I have no distinct recollection about it. Possibly Mr. William Means first suggested it.

X Q. 16. Suggested what?

A. That his relations with Mrs. Means were not those that characterized Romeo and Juliet.

X Q. 17. What information had been given to you, if any, prior to October 16, 1890, with respect to any trust?

A. Well, I could not undertake to say, as I said a moment ago, when I first heard of that deed from him. It was a matter in which I had no concern.

X Q. 18. Well, Mr. Baker, are you prepared to say that you had heard of that prior to your going to Ashland in October, 1890?

A. Of this trust?

X Q. 19. Yes, sir.

A. Well, I do not know as I am. I have no distinct recollection of when I first heard of that. I recollect more particularly of the relations, and Mrs. Means, because I recollect, in Ashland, either Colonel Williams or Mrs. Williams relating what, to my mind, was a very funny incident that had occurred, as I was told, at Mr. William Means' house in Yellow Springs, at which I laughed, but that was not a matter with reference to any trust. It was a matter purely with reference to their personal relations, but I would not undertake to swear that I had ever seen that deed of trust. There had been some other talk of simple divorce or alimony, and heaven knows what else. I never charged my mind with it, because I never listened to those matters except as they were forced upon me. I saw Mrs. Means, and my relations with her were civil, and I never charged my mind with those matters.

X Q. 20. Do you remember what day it was you went to Ashland?

A. I have not the slightest idea.

451 X Q. 21. Or how long you were there?

A. I recollect that very distinctly. I do not recollect when I got there. I think it was in the morning. I do recollect that I did not get away until some three or four hours after the train was due at Ashland, which time I spent in the depot. I think I was due to leave Ashland at three in the morning, went down to the depot, and watched until half past six or seven, much to my disgust.

X Q. 22. Were you there more than one day?

A. I think not—and night.

X Q. 23. Were you present when the papers that were signed by William Means were executed?

A. I suppose so. I was present at Mrs. Adams' house, took tea with Mrs. Adams, I think, and Mr. Hager was there, or came in afterwards. There was some paper executed there, and I remember Mr. Thomas Adams sending out and fetching in somebody as a witness from outside of the house. If that is the paper you refer to, then I saw it signed.

X Q. 24. Then you were there as the attorney for William Means, were you?

A. One of them.

X Q. 25. Who else was acting as his attorney?

A. Well, I understand Colonel Williams was associated or principal, I don't know which—your friend, of counsel.

X Q. 26. Did you go there with William Means, or meet him there?

A. Met him there; I didn't go with him.

X Q. 27. Did you prepare the paper that was executed?

A. I don't recollect.

X Q. 29. Did you see it before it was executed?

A. Well, I presume so, and read it.

X Q. 30. Do you remember how many papers were executed?

A. I do not.

X Q. 31. Were you present when the notes were turned over to William Means?

A. I do not recollect.

X Q. 32. Do you remember that notes were turned over to William Means?

A. I do not recollect. There may have been.

X Q. 33. Well, do you recollect that a claim was made by the administrator of a certain amount due from William Means, and that this receipt was given in satisfaction and settlement of that sum claimed to be due?

452 A. Well, Mr. Maxwell, that is very possible. I have been asked about that matter a number of times, and I have given the matter some consideration, but I do not recollect just exactly what was signed, or what was turned over, or what was not turned over—now, I could not—although my recollection is that Mr. Adams, when he sent out and called in a witness, had that paper read. I do not think for the life of me, I could set down and undertake to state what was in it.

X Q. 34. But you remember, I suppose, Mr. Baker, that the claim was made by the administrators, that Mr. Means was indebted to the estate for money that had been paid to him in connection with his troubles growing out of the Metropolitan bank?

A. Why, my recollection about this matter was this—yes, I should think so in response to that. My recollection is that Mr. Maxwell, with Colonel Williams and Mr. Means for some time previous, had been in consultation with Mr. Hager, and his immediate relatives, and that, of course, I was present at none of those, and when I came up there the matter that was directed to me, as I recollect, was not the matter of those details particularly as it was, but what he had better do himself. I recollect saying to Mr. William Means: "Your brother and your sisters have been your kindest friends in your trouble, and blood is thicker than water and you tie up to them." Now, I said that to him, but as to the details of the matter, I do not recollect what was done.

X Q. 34. Don't you recollect, Mr. Adams, the general purport of the receipt that was executed by William Means' administrators on that occasion?

A. I don't believe I can tell you what was in the receipt if I was to try.

X Q. 35. Don't you recollect?

A. I don't remember, I may have said that it was a receipt.

X Q. 36. Don't you recollect that it was a receipt which acknowledged payment of a certain amount to have been made for William Means, by Thomas W. Means, and directed the application of that amount upon the legacy that was due him under his father's will?

—. Still, I could not recollect that; that was very likely. If there was such a paper, the paper would show, but I could not recollect. I could not undertake to tell you today the contents of the paper, or the recitals of it. I have not seen it, and I have not thought about it until the last 30 days, when I shall ask my recollection about it.

X Q. 37. Well, whatever the paper was, it was submitted to you, was it?

453 A. Yes, sir. I guess it was; yes, sir, and I read it, probably.

X Q. 38. And you don't wish to leave the impres-ion that that paper was executed otherwise than in good faith, do you?

A. No. Do you mean that we were acting in bad faith with regard to it?

X Q. 39. Yes.

A. Oh, no, not that I know of.

X Q. 40. Did you know personally, Mr. Baker, anything about the amounts that had been actually paid to or for William Means by Thomas W. Means?

A. No, sir; I do not, except in a general way. I think Mr. John Means and I had talks about that. John Hunt and myself may have had. Mr. McConville and myself may have had, but that was only incidental to the trial of Mr. William Means, whom I defended.

X Q. 41. You defended William Means in his criminal trial here?

A. Yes, sir, and I gave my whole mind and soul to that, and about these other matters I do not think that I ever knew of them unless it was incidental.

X Q. 42. You knew, I suppose, that payments had been made to or for William Means in connection with his troubles?

A. So I had been told.

X Q. 43. And you had been told by William Means, hadn't you?

A. Oh, yes; in large sums.

X Q. 44. And you knew that these met at Ashland for the purpose of settling the liability or application with respect to those payments, didn't you?

A. Yes, sir. My recollection is, now that you speak about the matter, that on the one side, I think Mr. John Means was sick and away. I do not think he was in Ashland when I was there, and I had nothing to do with these preliminary details. My recollection is that I was called in at the wind-up. Upon the one side, as I recollect it, it was claimed that the executors were insisting upon, or perhaps it was a sister or sisters of William Means, were insisting upon one hand of having some sort of settlement with Mr. William Means; and on the other hand, there was the matter of his creditors, and his wife, and he was just in the position that Colonel Williams and I at the time hesitated as to what should be done, and what was best to be done, and finally the end of it was what I said a minute ago of the receipt, but as to what the amounts were, and all
454 those details, I do not recollect. I don't think I was consulted.

X Q. 45. You have no knowledge, information, or belief that the amounts that were stated at that time were false or untrue, have you?

A. I do not know anything about it.

X Q. 46. Did you have any knowledge, information or belief that the effect of the paper executed at that time was otherwise than to give to the estate of the father of William Means and to his brothers and sisters a settlement with respect to the amounts that they had paid to or for him, and my recollections is that the then relations between William Means and his people at Ashland were of the most cordial character, and had been; but his relations with his wife at that time were not, as I had been advised. Upon the one hand, there was one party pressing William Means for settlement, whether it was with the executors or with his sisters who had advanced money, I do not know. I knew generally that it was claimed, or I had been told, that they had made large advances for him, or to him, and that after that his sisters had contributed, or his brother possibly contributed very materially to his support, and I recollect of telling William Means that in the first place he did not lose any rights in the way of receipting for more money than he had gotten in dealing with trustees, so that it did not concern me if it had been a receipt for $200,000, and if there had been $500,000 coming to him I would have advised him that a receipt in full would not

have barred his recovery of $300,000 at some other time. And I told him that as between his creditors and his wife on the *other* hand, and his relations who had treated him as they did upon the other, that they were the ones to tie to. That is the feeling I had when I advised him.

X Q. 47. And was there any knowledge or belief on your part, Mr. Baker, that he was settling at that time *of* Thomas W. Means and with his brother and sisters, anything except an obligation that was in good faith and really due from him to them?

(Objected to as the witness has said that he did not know anything about that.)

A. I had not any knowledge, or suspicion that anybody that we were dealing with at Ashland had engaged in anything that savored of bad faith on either side. I only know I was governed in the matter by what I felt was his legal right in dealing with trustees, and what I knew had been his personal relations with the people with whom he was dealing.

455 X Q. 48. Did you leave William Means at Ashland when you came here?

A. Yes, sir. I left him at the hotel with Colonel Williams.

X Q. 49. You returned to Cincinnati?

A. Yes; alone.

X Q. 50. Assuming the paper was written on the 16th, you left the 17th?

A. Yes, sir.

X Q. 51. Early in the morning of the day after the paper was executed?

A. That is right.

X Q. 52. Do you remember the execution of a mortgage to you and Mr. Williams by William Means shortly after this time?

A. Yes. Well, I recollect I got a mortgage; I do not recollect the execution of it. I do not think I had anything to do with that at all. I think it was after it was executed it was sent to me.

X Q. 53. That was secured by you for fees?

A. Yes, sir.

X Q. 54. You were not present when it was executed?

A. I have no recollection of it at all.

X Q. 55. And don't you know when or where it was executed?

A. No; I think I have got a mortgage; I could tell you without looking at it. I do not think I had anything to do with the execution of it. I think Williams did.

X Q. 56. Had it been executed prior to your leaving Ashland on this occasion?

A. My recollection is that it was prior to that.

X Q. 57. When you were at Ashland did you arrange for the execution of the mortgage?

(Objected to as wholly irrelevant.)

A. When I was at Ashland I said this: "William Means had a lot of litigation at Cincinnati, a lot of suits that were pending, and

he had complications at Cincinnati, and had counselled with him about it, and I had never received a dollar of fees, and I recollect that when at Ashland I said to Mr. William Means that while I was not doing so particularly much of work in Cincinnati in these cases, yet, still, they had to be watched, and I was sent for suddenly about that, and I thought he ought to make some arrangement about fees, and I think he told me he had some interest in some lots at Ashland. I said I thought he ought to give me a mortgage, and I think he said he would, and I think afterwards he did give
456 me one to Williams and myself, and I think Williams had his recorded, and then sent me mine, and I do not think I saw it until after it was recorded.

(Objected to as wholly irrelevant.)

X Q. 58. You have spoken of the Howe case. What was the liability asserted against William Means in that case?

(Objected to.)

A. My recollection is that Howe brought an account against all the directors in the bank. It is reported, I think, in the 33rd, or 44th Federal Reporter. Howe, through Sayler & Sayler, brought an action against them for damages in mismanagement. I forgot the amount of damages; it was something less than a million. I think it was against stockholders.

X Q. 59. It was a suit to recover against William Means for negligence as a director of the Metropolitan National bank.

(Objected to as irrelevant.)

A. Everybody connected with it.

X Q. 60. The other claims against William Means, were on account of his indebtedness to the Metropolitan National bank, and other persons?

A. Yes, and a matter growing out of his connection with the bank.

(Counsel for complainants here offers in evidence certified copy of the decree in the Greene County cause.)

Mr. GLIDDEN: I now notify counsel that I will apply to the court to compel the production of the letter, which the record shows they refused to produce, and with that, unless there is some documentary evidence that I have overlooked, we will close our case.

And afterwards, to wit, on the 22nd day of August, A. D. 1891, this cause having been duly assigned for trial, this day came the plaintiffs and the said M. E. C. Means, who on her motion is made a party herein and consents to and confirms the allegations of the petition and thereupon this cause came on to be heard upon the petition, the evidence and argument of counsel, and the court, being fully advised in the premises, finds that the facts all and singular set forth in said petition are true, and that the said Thomas W. Means died testate having left said will, on the — day of June, 1890, leaving an estate amounting to nearly one million of dollars, consisting almost exclusively of personal property.

Decree Ordering Defendant William Means to Transfer His Interest to Trustees, etc.

It is therefore adjudged and decreed that the defendant,
457 William Means, within 30 days from the entry of this decree, by a good and sufficient deed of conveyance convey, transfer, and set over all his interest of every kind—real, personal and mixed—in said estate of the said Thomas W. Means, deceased, whether coming to him, said William Means, as devisee, or heir-at-law, except as hereinafter provided, to B. R. Cowen, Evan F. Williams, and A. S. Frazer, trustees in trust, and upon the trust they take possession of all of said property and convert it into money and hold and invest the same upon security such as is required of a guardian under the laws of Ohio, being hereby vested with all the authority and powers necessary or appropriate for such purpose and that they apply the next increase thereof and so much of the principal as may be necessary to the reasonable support of the family of William Means, including himself, the plaintiffs and their said mother; provided that upon agreement in writing of all the parties as to distribution of said trust *finds to* trustees shall execute such agreement.

Said trust shall continue during the lifetime of the said William Means unless all of said beneficiaries agree in writing to an earlier termination thereof.

And any agreement in this behalf which they shall so make, shall be respected and carried out by the said trustees.

The said conveyance shall include all the interest of the said William Means in the estate of the said Thomas W. Means, deceased, whether by will or inheritance, except the household goods, furniture and personal property mentioned in item 3 of said will.

Upon the termination of this trust, said property or so much thereof as remains undisposed of by agreement as aforesaid, shall be divided equally between the plaintiffs and their legal representatives, share and share alike.

In default of the execution of such conveyance of the said William Means, within the time herein specified, then and in that event this decree shall operate as, and have the force and effect of such conveyance.

Said trustees shall each give bond to the State of Ohio, for the benefit of whom it may concern in the sum of $100,000 with sureties to the satisfaction of the clerk of the court, conditioned according to law, for the faithful performance of his trust.

Upon the application of any party in interest, this court or a judge thereof, at chambers, may at any time require a new or additional bond of said trustees or either of them.

They shall report their doings to this court once every year, and whenever the court, on application of any party in interest, shall require them to do so.

458 In the event of either or any of said trustees failing to qualify by giving the required bond within 30 days from the

entry of this decree, the other trustees or trustee named who shall so qualify, shall execute this trust.

It is adjudged and decreed that the defendant, William Means, pay the costs of this action taxed at $—.

JOHN MEANS.

Q. 1. You are the same John Means that has testified heretofore in this case?

A. I am.

Q. 2. When did you get acquainted with Mr. Evan Williams—about when?

A. The first recollection of any acquaintance I had with him was in 1874. I may have seen him before.

Q. 3. At what place?

A. Here.

Q. 4. On what occasion or occasions?

A. He was coming up here to make temperance speeches in the spring.

Q. 5. How often, if at all, did you ever meet him at your father's house, and when?

Objected to as irrelevant and incompetent.

A. I have no recollection of ever seeing him at my father's house.

Objected to as irrelevant and incompetent.

Q. 6. What acquaintance did he have at your father's house, so far as you know, if any, and when did it begin?

Objected to as irrelevant and incompetent.

A. I had heard that William Means was educating him but I cannot tell when nor when he began to go to my father's house—probably after he began his education at William's expense.

Objected to.

Q. 7. What correspondence, if any, did you ever have with Evan Williams, and when?

A. I have no recollection that I ever corresponded with him. If ever I wrote him it was possibly notice about the date of some of those temperance meetings in '74. I had no correspondence with him that I recollect of after that; certainly not within ten years past.

Objected to for the same reason.

Q. 11. Are the securities mentioned on that paper the securities that were turned over to you or handed to you by Mr. McConville as held by the Metropolitan bank as collateral to the notes and interest amounting to one hundred and twenty-five thousand dollars that he turned over?

459 Objected to for the same reasons.

A. They are.

Q. 12. Now, are there any indorsements or memoranda on the back of that paper; if so, state what they are, who made them and at what time?

Objected to.

A. On the back is here in ink, "11th–2–'88 S. F. Hunt $1,200." I made that indorsement at that time as memorandum of a check given to Mr. Hunt at the request of William Means, which money he said he wanted to send to his wife or give to his wife. These words are in pencil: "Ac. A. N. B. Power att'y, Keys U. S. bonds." Then in ink Ex. 1. Ashland, Ky., April 26th, 1893. B. Perin, sp. ex.

(Letter-head of Grand hotel.)

CINCINNATI, *Feb. 11th*, 1888.

Estimate.

Whisky Trust 8 % @ par worth now	50		16000
Roan M't'n S. & I. Co.,	60		30000
Ashland Nat. B'k stock,	par		3500
Means, Kyle & Co.,	"		10000
Cable R'y bonds,	"		2000
Athens, Tenn.,	25		4000
Covington Transfer R'y, (only 500)	par		1000
Manufacturers' Land & Im. Co.,	"		2000
Toledo R. E. (see Jas. S. Rodgers)			10000
Telico Mfg. Co.,	par		5000
Findlay R. E.			15000
			$98500
	44300		
Metropolitan stock 132 cost	14176		
		$58476	
		98500	
		156976	

(Letter-head of Grand hotel.)

CINCINNATI, *Feb. 11th*, 1888.

Individual liability 120 to 125 M.

Collaterals.

Metropolitan Bank stock,	par	$44,300
Whisky Trust,	"	32,000 8 %
R. M. S. & I. Co.,	"	50,000
Ashland Bank stock,	"	3,500
Means, Kyle & Co. stock,	"	10,000
Avondale Cable R'y bonds,	"	2,000
Athens, Tenn., Mfg. Co.,	"	16,000
Covington Transfer R'y, (only 500)	"	1,000

460

Manufacturers' Land & Imp. Co. Cov'gton	"	2,000
Toledo R. E.,	"	7,000
Tellico,	"	5,000
Findlay,	"	15,000
		$187,800

(In pencil:)

63 B. S. Pkt. 30 Sh. Mt. Auburn C. R'y Co. 9 Northern iron works.	Reported by Examiner Sanders.	10,200
10,200		$198,000

On the back: 11th–2–'88, S. F. Hunt $1,200.
Ac. A. N. B.
Power att'y.
Keys.
U. S. bonds.
William Means' list of collaterals and his estimated value, 11th February, 1888.

"William Means' list of collaterals and his estimated value, 11th February, 1888." That was made by me, but I don't know at what date—probably after I got home.

Q. 19. Look at this paper handed you and state what it is.

A. This is a receipt which reads as follows:

CINCINNATI, OHIO, *11th February*, 1888.

Received of Thomas W. Means by the hands of John Means twelve hundred ($1,200.00) dollars on account current.

WILLIAM MEANS.

Q. 20. When was that executed and where?

Objected to.

A. That was executed at Cincinnati. That is, I wrote the receipt, the body of it, and William Means signed it and enclosed to me from Cincinnati in a letter of his dated, I think, the 21st of February, 1888.

Objected to.

It is agreed that the originals of the receipts now copied into the record shall be on hand at the trial, if desired.

Q. 21. Look at that paper and state what it is.

A. This paper reads:

CINCINNATI, OHIO, *10th February*, 1888.

Received of Thomas W. Means by the hands of John Means seven hundred ($700.00) dollars on account current.

WILLIAM MEANS.

Q. 22. By whom is it signed?

Objected to.

A. Signed by William Means.

461 Q. 23. When did you get that?

A. This was received in the same letter with the $1,200 receipt.

All the receipts and papers about which and upon which this witness is now being examined are objected to as irrelevant and incompetent, and this objection shall extend to all this line of interrogation.

— 24. Look at the paper now handed you and state what it is, how and when you received it and by whom it is executed.

A. I think this was received in the same letter as the two before. It reads as follows:

CINCINNATI, OHIO, 18*th February*, 1888.

Received of Thomas W. Means by the hands of John Means one thousand ($1,000.00) dollars on account current.

WILLIAM MEANS.

Q. 25. Look at the paper now handed you and state what it is, how and when you received it, and by whom it is executed.

A. This paper reads:

CINCINNATI, OHIO, 28*th February*, 1888.

Received from Thomas W. Means per John Means and C. M. Holloway one thou sand ($1,000.00) dollars on account current.

$1,000.00. WILLIAM MEANS.

The date 28th is written by William, and the signature.

The one thousand ($1,000.00) dollars on the left in figures is by William.

I do not know the date I received that without having the letter.

Q. 26. Are these several amounts shown by these four receipts properly entered upon the books of Thomas W. Means?

A. Yes, sir.

Q. 27. In the current account of William Means?

A. In the current account.

Q. 37. Did you have more than one conversation with Mr. Williams on that trip?

A. Our conversation on that boat up the river on the 15th of Feb. was after supper and before we went to bed. I don't think we talked very long and I don't think we had but the one conversation on that subject.

Q. 38. Mr. Williams, in his evidence, states substantially that you proposed to take notes for the purpose of protecting the interest of William in the estate of his father. State what the fact is as to whether you referred in that conversation with him upon

462 that trip up the river, to any other note than the $125,000 note that you proposed to take.

This question is objected to on the same grounds, and also the answer, as to the one above, with the addition that Mr. Williams made no such statement in his deposition as related by the attorney in this question.

A. I did not mention any other note or notes.
Q. 45. State what the paper now handed you is.
A. Letter-head of Citizens' National Bank of Cincinnati.

CINCINNATI, O., *Feb.* 23, 1888.

Mr. John Means.

DEAR SIR: Enclosed please find your father's note for fifty thousand dollars as I received your check for same. I have not sold the trust certificate for whiskey stock. The best price offered now is 47 to 48. I have thought they might improve. I saw William yesterday. He is anxiously waiting for news from Washington. Mr. Hunt and Jordan have not returned but are expected back tomorrow. Remember me kindly to your father.

Yours truly, HENRY HANNA.

Objected to.

Q. 47. Look at that paper and state what it is.
A.—

$50,000. CINCINNATI, *Feb. 15th*, 1888.

One day after date I promise to pay to David Sinton or order fifty thousand dollars, value received.

THOMAS W. MEANS,
By JOHN MEANS,
Attorney-in-fact.

Endorsed across the face "Paid Feb. 23, 1888" in red ink. Written by Mr. Sinton's clerk, H. J. Thomas, and indorsed on the back "John Means" and "paid" across that with a scroll to insure the cancellation.

Q. 52. Look at the paper now handed you and state what it is.
A. That is a letter and reads as follows:

CINCINNATI, *Feb.* 23, 1888.

John Means, Esq., Ashland, Ky.

DEAR SIR: I am in receipt of your favor of yesterday enclosing Ashland National Bank draft No. 49911 on First National bank, this city, for fifty thousand, sixty-six and .67 ($50,066.67) dollars, the same being for payment of Thomas W. Means' note in my
463 favor dated Feb. 15th, 1888, at one day for $50 M with interest. Said note is herewith enclosed. Much obliged.

Respectfully yours, DAVID SINTON,
By H. J. THOMAS.

Q. 55. Look at the paper handed you and state what it is.
A. That is a note which reads as follows:

ASHLAND, KY., 15*th Feb.*, 1888.

One day after date I promise to pay to the order of Margaret A. Means seven thousand five hundred thirty-seven $\frac{50}{100}$ dollars, for value received, with interest.

$7,537.50. THOMAS W. MEANS,
By JOHN MEANS,
Att'y-in-fact.

Endorsed across the face of the signature "paid" and scroll for cancellation. On the back of it is endorsed "1888, April 9, credit by sixty-nine hundred ($6,900.00) dollars. 1890, Feb. seven hundred and eighty-five and $\frac{6}{100}$ ($785.06) dollars." Endorsed under the payment "Margaret A. Means."

Q. 77. In the conversation with Mr. Williams coming up the river on the boat on the 15th, who introduced that conversation with reference to the note?

Objected to. There is a letter on that subject.

A. I can hardly tell who began the conversation. My statement to Williams about the note was made in reply to a question of his.

Q. 78. What was the question?

A. The question was as to how I proposed to close up the matter of these payments and the shape to put it in. That is the substance; I cannot give the words.

Q. 81. Now, then, will you turn to your copy book and read the letter to which this is a reply?

Objected to.

A. There was a letter-head with my name on it, "John Means, Ashland, Ky., 18—." That did not copy. The written part is as follows:

20TH FEB., '88.

William Means, Esq., Cincinnati, Ohio.

MY DEAR WILL.: Herewith find forms which explain themselves. Please copy, sign and return to me at your earliest convenience. Also the receipts for cash paid. The 69 shares Big Sandy Packet Co. were credited to your current account on father's books. There will be need to sell some of the securities to get money to pay what we have borrowed. I also think it best for you to have as here-
464 with indicated, fearing suits will be brought against you and other directors which may give you trouble as it now stands. Father is growing more feeble and almost blind. He has seen his children and others for the last time unless an operation restore his sight again. All well. With love to Martha.

Yours truly, JOHN MEANS.

This answer is objected to for the reason that this letter has heretofore been testified about and put in proof upon this witness' examination-in-chief in behalf of complainants.

WITNESS: The second letter, being Exhibit 8 of complainants' testimony, dated 23rd of February, '88, is in reply to a letter from me of 21st of February, 1888, which appears on page 147 of my private letter book, as follows:

William Means, Esq., Cincinnati, Ohio.

DEAR WILL.: I wrote you yesterday enclosing papers. Am anxious to close up this matter this week, as I propose to leave Saturday, 25th inst. for N. Y. city, returning on or about the 3rd prox. My address in N. Y. will be 31 Burling slip. I desire to have note to father and to make proper entries on his books and my own before leaving here. Have had transferred to father stocks, namely:

69 shares Cin'ti, Ports., Big Sandy & Pomeroy Pkt. Co...	$6,900 00
35 shares Ashland National bank.....	3,500 00
9 shares Norton iron works.....	9,000 00
63 shares Cin'ti, Ports., Big Sandy & Pomeroy Pkt. Co ..	6,300 00
10 shares Means, Kyle & Co.....	10,000 00

I do not like to go farther without the authority for which I wrote yesterday. Don't forget to write asking father to protect your notes at the Ashland National bank and better send another paper authorizing holding, selling, or collecting on the collateral 220 shares M. N. Bank stock.

Yours truly, JOHN MEANS.

Question and answer objected to upon the ground that the witness has heretofore testified in regard to them and that the letter is already in evidence in his examination-in-chief.

465 Q. 82. Now, Mr. Means, I will ask you to turn to your letter book, page 149, and read the answer to William Means' letter of 21st of February, 1888?

A.—

23RD FEBRUARY, 1888.

MY DEAR WILL.: Yours of the 21st inst., note and authority to sell securities, came to hand last evening. Am sorry that my reference to father's sight caused you trouble. He keeps cheerful and contented, walks out every day if good weather, some one taking his hand as he walks. Have explained to him my action in your affairs, amounts paid, how obtained, the advantage of saving securities pledged from being sacrificed, &c., &c. He understands all, but soon forgets details so that have to explain again when next I see him and always ends by telling me to do as I think best for you. I wrote you not long since as to father's prize in Maggie as a daughter, and assure you that you have in her a sister to be proud of as well. Many here have kind words to speak for you—more than I can mention. With the many warm and able friends who have shown themselves in the past few days don't be discouraged, but cheer up for the sake of your family. I don't think they feel it a burden to share your trouble. It is not that we do for ourselves, but what we do for others will give us most pleasure to think of. Keep me advised of your needs for money and I will try to keep you from

trouble on that account. Just now the amount borrowed engages my attention, but I hope soon to have under my control. Yesterday I paid a hundred thousand, so you see I am not in a hole. All well at home.

Yours truly, JOHN MEANS.

Q. 83. Now turn to page 151, Mr. Means, and read the letter in reply to William Means' letter of 23rd of February. It is marked Exhibit 8 in your deposition for complainants.

(Same letter-head.)

24TH FEBRUARY, '88.

William Means, Esq., Cincinnati, Ohio.

MY DEAR WILL.: Yours of 23rd inst. to myself and one to our father are at hand. Besides the securities lifted on the 15th at the Metrop. N. bank you also handed me on the 18th others, namely:

	Receipt of Covington Transfer R'y Co. for first call ten per cent.	$500 00
466	Receipt of Manufacturers' Land and Improvement Co. call 5%	250 00
	Certificate No. 66 for 200 shares, each $50, Ky. Iron, Coal and Manufacturing Co.	10,000 00
	Certificates Nos. — for 423 shares, each $100, Roan Mountain Steel and Iron Co.	42,300 00

I think it may be prudent and safer to send me authority to dispose of these like that sent in regard to the others. After the storm blows over we can arrange about them. Have left the Whisky Trust with Mr. Hanna to dispose of at his discretion. Shall not need the money until note of March 13–16 comes due and could get through then without the proceeds. Had letter last evening from Captain Holloway, which was answered this morning. Enclosed to him draft for one thousand ($1,000) dollars for you. Please acknowledge. Leave tomorrow at 6 p. m. for N. Y. All well.

Yours truly, JOHN MEANS.

Q. 84. Mr. Means, turn to page 154 of your letter book and read what you find there?

A. Same letter-head again.

5TH MARCH, '88.

William Means, Esq., Cincinnati, Ohio.

MY DEAR WILL.: On reaching home Saturday, 3rd inst., I found letter from Capt. Holloway, of 27th ult., enclosing receipt of E. F. Williams, att'y, &c., for two thousand ($2,000.00) dollars. This includes $1,000 paid 18th February, for which you had sent me receipt as well as $1,000 for Capt. Holloway remitted with mine of 24th ult. Please sign receipt herewith for last-mentioned sum only so as to have the receipts correct. I wrote you on the 24th ult. as to the stocks and receipts handed me on the 18th of February and advising that you send authority to sell and dispose of same like that of 15th ult. Have you found the lost certificate for shares in Metro-

politan N. bank? Please send me No. and date of the same that I may examine and see if it is among those held by the Ashland N. bank. What will De Camp do about his note due 9–12 inst., $1,200.00, to Ashland N. bank and endorsed by you? Left Lillie and Mr. Maynerd well. Mary and Rose sail next Saturday, 10th inst., in steamer Burgoyne and expect them here about 25th. Maggie and father well.

Yours truly, JOHN MEANS.

467 Objected to as irrelevant and incompetent and having nothing to do with the issues in the case.

Q. 86. Now I will ask you to turn to page 162 and read the letter which is an answer, as I understand it, to William Means' letter of March 6th, marked Exhibit 45 in your deposition for complainants?

Objected to.

A. Same letter-head.

MARCH 9TH, 1888.

William Means, Esq., Yellow Springs, Ohio.

MY DEAR WILL.: Yours of 6th inst. came last evening, covering receipt dated 28th ult. for one thousand dollars from father 24th ult. Herewith I return you receipt for $2,000 given by E. F. Williams, att'y, &c., which included two remittances. The authority to sell securities handed me 18th ult., viz: Cov. Transfer R'y Co., first call, 500; Mfrg. Land & Imp. Co. call, $250; certificate 200 shares in Ky. I. C. & M. Co. and certificates 423 shares Roan Mtn. S. & I. Co. is made to father. Don't you think it will be better to write, giving the authority to sell to me? Father may survive us both, but that is hardly probable, and matters might be simplified if you write it as to pay for the amount $125,911.74 paid to the Metropolitan N. bank receiver. Your matters have been entered as follows:

First, I charge myself on father's books with the $125,911.74, under date of 16th February, 1888.

17th Febr'y, credited myself for 35 sh. Ashland N. Bank stock	$3,500.00
17th Febr'y, credited myself for 9 sh. Norton iron works.	9,000.00
20th Febr'y, credited myself for 63 sh. Cin'ti, Ports., Big Sandy P. Pkt. Co.	6,300.00
20th Febr'y, credited myself for 10 sh. Means, Kyle & Co.	10,000.00
22nd Febr'y, credited myself for Wm. Means' note, dated 15th Febr'y	125,911.74
6th March, credited myself for 2 Mt. Auburn Cable R'y bonds	2,000.00

On my books I have entered as follows, viz:

16th Febr'y, Wm. Means to Thomas W. Means, current account paid, &c., 15th	125,911.74

20th Febr'y, Thomas W. Means, account to adventure to Cincinnati, 35 sh. Ashland N. bank, 17th inst. 3,500.00
468 20th Febr'y, Thos. W. Means, for 9 sh. Norton iron works 9,000.00
For 63 sh. C., P., Big Sandy P. Pkt. Co., 18th..... 6,300.00
For 10 sh. Means, Kyle & C..... 10,000.00

28,800.00

N. B.—Received of Metropolitan N. bank with notes of Wm. Means.

22nd Febr'y, Thos. W. Means, current account to Wm. Means for note of 15th inst..... 125,911.74
6th March, Thos. W. Means to adventure to Cincinnati for 2 bonds, Mt. Auburn C. R'y Co..... 2,000.00

Received these of Metropolitan N. bank with notes of W. M. There is also entered on father's books—

13th Febr'y, steamboat stock to Wm. Means, current account to 69 shares C., P., Big Sandy & P. Pkt. Co., 11th inst..... $6,900.00
13th Febr'y, Wm. Means to Ashland N. bank for John M., paid Labrot $700, S. F. Hunt..... 1,900.00
20th Febr'y, for John M., 18th inst..... 1,000.00
24th Febr'y, for Cin. draft sent C. M. Holliday..... 1,000.00

Thus you can see that there is due you now on current account $3,000 from T. W. M.

I have opened the current accounts to keep separate from accounts of advancements to us. It will be well for you to preserve this letter, as in the event of anything happening to me it may be needed and used as evidence for benefit of yourself and family. I would like to know whether what I have done in the matter is satisfactory to you, or have your suggestion to make as to changes in shape of accounts, &c., &c. As part of the receipts from the Cov. R'y Transfer Co. and Manfrs.' Land & Improvement Co. were among those received from the Met. N. bank, I think it better to leave these out of the authority to sell those received from you on the 18th inst., and that some kind of authority be given to transfer (to father), better leave blank, on the books of the companies. Is it not probable that other calls may be made on these stocks? If so, which is better; to pay the calls or to forfeit the payments made? Please advise me as to this. Let me know of your needs *of* for money that I may keep you supplied. Father has not been quite well for a few days; has cold. Think him better today. Rose and Mary sail from Havre in the Burgogne tomorrow, leaving Paris today. We
469 expect them with Lillie and Cook about the 23rd when I hope to have all of my family at home once again. With love to Martha and family.

Affectionately yours, JOHN MEANS.

On the blank space at the top was written these words: "Stay a Yellow Springs unless you come here. Mr. Hanna wrote about Mr. Baker that he thought he (B.) 'understands the case and has the ability to manage it better than those he had before employed.'"

Objected to as irrelevant and incompetent and not pertinent to the issue in this case, William Means not being a party to it. The same objection is made to all other letters of similar character written by John Means to William Means which have heretofore been introduced in this deposition and that may hereafter be produced.

Q. 87. Turn to page 170 and read the letter in answer to the letter of William Means of March 15th and 16th, 1888.

A. The same letter-head.

MARCH 21ST, 1888.

William Means, Esq., Yellow Springs, Ohio.

MY DEAR WILL.: In reply to yours of 15th and 16th instant herewith find form of agreement for sale of the Ky. I. C. & M. Co. stock and 423 shares Roan Mtn. S. & I. Co. made to myself which I think will be better than giving authority to father who cannot see to read or write and whose memory is so poor.

The Findlay circular mentions certificates of stocks $375 each due 16th inst.; are there any more notes and if so how many, what amount and when due? I mean your note. In Cin'ti last week I learned of your note, $5,000 on call, held by a bank or banker at Circleville Metropolitan Nat. Bank shares as collateral, asked to have it and it will probably be held without sale of the stock until I hear from you. Have you any other notes out? If so advise me what, to whom, &c., &c. It may be best for you that I pay or buy them up to secure the collaterals. In the list you gave me 11th ult., you only put down $44,300 M. N. Bank stock. I received from Mr. McConville, recv. 22,300 and we learn from the Ashland N. 20,000 making in all 42,300.00 equals M. N. Bank stock. The Circleville if as I understand is 5,000 00 makes 47,300. I have not yet
received the Findlay or Toledo mortgages from Mr. McCon-
470 ville. They having been sent for recording and not been returned to Cin'ti. What other evidences than these mortgages have you of your interest in the land. Have not heard anything from Mr. De Camp as to his note. Can you give me Louis Krohn's address? Have not been able to sell the whiskey trust so far at fifty cents. Left it with Henry Hanna but since he went South have placed it with Mr. Griffith at Citizens' N. B. Keep me advised of your needs for cash. If you do not wish to place Ky. I. C. & M. Co. dividend check in bank send me with instructions how to remit to you for it. Mary and Rose landed in N. Y. Sunday 18, leave tomorrow and we expect them Friday 23rd. Father much better than last week, fine weather permitting to go out but today is stormy. With love to all

Yours truly,

JOHN MEANS.

Q. 91. Will you turn to your letter of the 21st of April, 1888, in

reply to William Means' letter of April 16th 1888, a portion of which is Exhibit No. 20 and all of which is Exhibit 59 to your deposition for complainant?

A. On the same letter-head.

21st April, 1888.

My Dear Will.: Yours of 16th was handed me after boarding the steamer to go to Manchester to funeral of Uncle Andrew. Mary and Rose were with me. From thence I went to Cin'ti. S. F. Hunt was sick so did not see him. Today I remitted him one thousand ($1,000.00) dollars as you requested. Saw Granger and Hunt about the Toledo property and they have arranged to pay your part if they pay theirs and McConville for De Camp. If we can get it clear shall probably with G. and H. buy the D. C. interest. Friends at Manchester were very anxious about you. If kind words and good wishes avail, you will soon be well and free from trouble. Lily left Tuesday for home. With love to all and hoping to see you soon if can get away next week.

Yours, JOHN MEANS.

Q. 92. I will ask you to read your letter of April 2nd 1888, if you find one.

A. The same letter-head.

2nd April, 1888.

My Dear Will.: We reached home safely at noon yesterday, found all very well. Father was very glad to hear from you and to know we had seen you. Bessie and baby staid here while
471 we were gone and went home yesterday evening. Cook left before we came. Saw Mr. Baker while in Cincinnati, also Mr. McConville. Mr. McC. told me he should be pleased to show Baker or yourself anything to give any information he might be able to do about your affairs at the bank. Have a letter from G. K. Duckworth that he will place to my credit dividends on D. & C. F. Trust. Made transfer today of two hundred shares in Ky. I. C. & M. Co. to father and placed 5,000.00 to credit of your current account on his books. I paid Mr. Baker 1,500.00 as I came through to Cincinnati. He said we would not quarrel as to his charges when your case is finished and that he would keep us advised in the matter. He was feeling very cheerful and pleased at the result in court Saturday morning. The umbrellas came today but you sent another in place of mine as you will discover when you open them. Tell Pearl to use the crutch constantly until the knee is entirely well. With love to all

Yours truly, JOHN MEANS.

Q. 94. Now, before we leave that month, or prior to this time, if you have any letters written in that month that have not been read, be kind enough to read them.

A. I have one on the 26th of March I have not read.

26th March, 1888.

My Dear Will.: Herewith please find the authority to T. W. M. to sell securities for which you have sent me the substitute dated

the 16th inst., tomorrow am expecting to transfer the Ky. I. C. & M. Co. shares to father. When he gave to Mary, Maggie, you and myself each two hundred (200) shares it was charged on his books at fifty per cent. *i. e.* $25 per share. This is more than it would probably sell for. The last sale we know were about thirty-two or thirty-three or sixteen and sixteen and a half per share and I shall credit you again at fifty per cent. same as it was charged to us when given. Father is very well today. Hoping to see you soon, I am

Yours truly,

JOHN MEANS.

I write Mr. George K. Duckworth today to send me his check for Dist. C. F. Trust dividend, the stock not having been transferred.

4TH APRIL, 1888.

MY DEAR WILL.: Yours of second inst. is at hand. I saw and have written you about Mr. Baker. He is fully aware of the need to follow up the case and promises to keep me advised. I
472 don't think he need to be urged and it may not be well to hurry him assuming that he might be neglectful. Another important thing, he is a sober man and is always ready, which is more than can be said for your other friends in the case. As to De Camp's Tellico collateral, I cannot afford to take care of that. The amounts we have been obliged to borrow and what we will yet need for your affairs will keep us occupied to furnish without looking after speculative stocks. I desire to sell and get money now rather than to invest in anything. Have sold the most desirable stocks belonging to Maggie and father, they being more salable than anything that Mary or myself have. Father walks downtown now the weather being fine. With love to self and family,

Yours truly,

JOHN MEANS.

Q. 95. Complainants have introduced a letter of William Means to you of the 30th of March, 1890, which is marked Exhibit 44. Will you please read your answer to it?

A. I did not answer it.

Q. 96. Complainants have introduced a letter of May 1st, '88, marked Exhibit 46, to your deposition for complainants and it seems by memorandum on the back that you answered it on the 7th of May. Will you read your answer?

A.—

7TH MAY, '88.

William Means, Esq., Yellow Springs, Ohio.

MY DEAR WILL.: Yours of first inst. is found on my return home from Low Moor. I left Cook very well. He has been prospecting for ore and camping out in the mountains in the tents with his friends. I return herewith Mr. Dudley's check for your endorsement. Father and Maggie are well. Yesterday afternoon we drove to Bellefont to see Bess and baby. At last we have warm weather with threatening rain. With love to all the family,

Affectionately yours,

JOHN MEANS.

Q. 98. Read the letter, if you have it, to which the letter of May

26th, 1888, which is Exhibit 34 to your deposition for complainants, is an answer.

A.—

28TH MAY, '88.

William Means, Esq., Yellow Springs.

473 MY DEAR WILL.: Yours of 26th is at hand. Herewith find draft on 1st Nat. Bank Cin'ti, endorsed payable to your order, thirteen hundred eighty-six $\frac{36}{100}$ ($1,386.36) dollars, as requested by you. I hope Col. Bright may succeed in selling the Roan Mountain stock as we have a pretty large sum borrowed for father which would like to pay while he lived. If Bright can sell the Tellico and Athens M. & M. Co., would be pleased to have him do so. Father is pretty well now but quite feeble. His blindness prevents exercising as he might do if he could see.

It is agreed that the residue of this letter does not bear upon the issues, by counsel for both complainants and defendants.

Q. 101. Will you read your letter to which William Means' letter of June 14th, 1888, which is Exhibit 13 in your deposition for complainants, was a reply?

A.—

16TH JUNE, '88.

William Means, Esq., Yellow Springs, Ohio.

MY DEAR WILL.: Yours of 14th inst. is at hand. Herewith please find Cin'ti drafts No. 52239..... 257 02
" 52240..... 123 09
" 52241..... 500 00

888 11

as requested. Father, Mary and Maggie well, also my family. We are having very hot weather, showers this afternoon. With love to all,

Yours affectionately, —— ——.

Q. 104. Will you read your letter which is an answer to the letter of July 12, 1888, of William Means to you, which is Exhibit 19 of your deposition for complainants?

A.—

18TH JULY, 1888.

MY DEAR WILL.: Yours of 12th is at hand enclosing Frank Huntington on National La Fayette Bank Cincinnati $350, which has been credited to your current account on father's books. I have ordered seven thousand (7,000) francs cabled to Emile Seignour et Bordeaux, France, as requested by you. When in Cincinnati last S. F. Hunt asked me about the Labrot matters, and I could tell him nothing. You may assure them that you have placed your affairs in my hands and that I shall do my best to straighten them out. I hope you will get Col. Bright to make sale of the Roan Mountain, Tellico and Athens stocks so that I can pay the money borrowed

for father now. After have this done can better help you in
474 the Labrot matter, and it is probable we shall be obliged to put in something on the trustee debt of ($110,000) at the M. M. bank, as action of McConville and Burnet may hinge upon it. Who is Frank Huntington, and have you the L. & B. S. bonds (now A. C. & I. R. Co. as I suppose) where they are safe? You can depend on Mary, Maggie and myself in money matters, but father's affairs I must handle with the care of an executor, and probably before no long time as one under a probate court. Am glad you have written as to the amount of the Labrot Trust, since it shows me what must be prepared for, and if not to be paid in a short time with aid your sisters can give, and I know both are willing, we can settle it up and get it off our hands. I think now it is best to get all your matters settled up as quickly as may be done. This is no time for speculation until all is settled. Was at Low Moor Sunday and Monday, 15th and 16th. Cook was well and anxious to hear from you and Maggie. Have letter from Harry at Portland, Oregon; expected to reach St. Paul, Minn., last of this week, and to get home next week.

Affectionately yours, JOHN MEANS.

Q. 105. In the letter of William Means to you of July 17, 1888, which is Exhibit 14 of your deposition for complainants, I see reference to yours of 13th. Will you read your letter of 13th?

A.—

(Page 233.)

13TH JULY, '88.

MY DEAR WILL.: I wrote Maggie this morning, which she will show you, as most of it referred to your matter. I have letter from G. B. Kerper about your interest in Kerper's addition to the town of Findlay, he says containing about 47 acres, divided into 22 shares of $1,500 each, that you have paid cash 1887 $375, and giving three notes of like amount, due respectively 1888, 1889 and 1890; that if we had no desire to hold the interest and pay these notes he (Kerper) will purchase them and pay $250 and return all your notes, you to send the certificates for your share. From what I can learn, it is best not to pay any more on this property. What shall I answer Mr. K.? Is there any other Findlay property? The papers I have are too indefinite for me to find out from them. Yours of 9th is at hand. Dr. —— made a corrected account, making it $1,450 instead of $1,400.50, as at first, and I have sent to him without waiting to hear again from you. There was to be a meeting had with Mr. McConville and the directors interested in the (trustee) debt, to
475 determine what had best be done. I heard that Roth disclaimed being interested, that Duckworth was uncertain, and that little or nothing could be expected from Mr. De Camp. Saw Mr. Gerke, who desired to be remembered to you. All well.

Affectionately yours, JOHN MEANS.

Q. 106. I see by William Means' letter of July 7, 1888, which is Exhibit 15 to your deposition for complainants, that he refers to

yours of 18th and 23rd. Will you please read first the 18th and then the 23rd, to which this is a reply?

A. I read the letter of 18th in acknowledgment of his of the 12th. The other one reads as follows:

(Page 237.)

23RD JULY, 1888.

MY DEAR WILL.: Yours of 17th inst. is at hand. I will see Mr. Kerper or have S. F. Hunt do so before accepting his offer, and try to get some information as to Findlay matters. Hunt writes me about certificate No. 171 for 50 shares M. N. Bank stock held by Circleville Nat. bank as collateral, that this makes an overissue of 50 shares. Have you any certificate other than this—that which I got of the Metropolitan N. bank and of the Ashland N. bank? Give me any information you can as to this. How much stock, *i. e.*, how many shares you are entitled to? I received today four hundred and eighty ($480.00) dollars by G. K. Duckworth, dividends Dist. & Cattle Feeders' Trust. I have asked to have this stock, 320 shares, transferred to my name, so that dividends shall be sent to me until it can be sold at satisfactory price. I expect to go to Cincinnati tomorrow, and may stay two days. Shall try to see Hunt, McConville and Kerper while there. We are having fine weather now, warm in daytime and cool at night.

Affectionately yours, JOHN MEANS.

28TH JULY, '88.

MY DEAR WILL.: I came home yesterday from Cincinnati, where I saw Messrs. S. F. Hunt and McConville and made examination as to your shares in M. N. bank. It seems you are entitled to 812, while claims have been put in that we know of, viz:

Received by me from Metrop. N. bank		223
" " " Ashland N. B.		220
By S. F. Hunt from yourself		9
	At Circleville O. Nat. bank	50
476	Mechanicsburg, O.	60
	Carlisle, Ky.	50
N. Y.		250
	Total	862

and shows an overissue of 50 shares to yourself as well as 50 over by the bank. Mr. Hunt thinks it best to pay off the 50 at Circleville and surrender the certificate No. 171 to Mr. McConville, agent. This is buying the certificate which it appears should have been surrendered and cancelled. Mr. Kerper could not be found, but Mr. Hunt will try to see him and get information about the Shaeffer (?) Findlay property. In mine of 13th inst. I mentioned that his offer on the Kerper addition, etc., required the surrender to him, K., of the certificate of ownership which you hold. You do not say anything about this certificate in reply and seem to

have overlooked it. Please advise me about those matters—Findlay and bank shares. Father and Mary well. Hattie and Rose came home while I was away and we expect Harry today.

Affectionately yours, JOHN MEANS.

P. S.—I remit today five hundred ($500) dollars to S. F. Hunt to pay some claims which he thinks should be settled and there is not much in his hands now remaining of that which has been paid to him for your account.

JOHN.

Q. 108. Will you read your letter which is in answer to William Means' letter of August 1st which is Exhibit 31 of your testimony for complainants?

A.—

6TH AUGUST, 1888.

MY DEAR WILL.: On another sheet you have copy of S. F. Hunt's letter of 4th inst. to me. He paid interest on the Circleville note a few days ago and has prevented selling or offering the collateral (50 shares) for sale for the time.

I shall wait to hear from you again before doing anything about paying it, not understanding what he writes as to C. C. Jacobs' connections with and claim to certificate No. 171.

Yours, &c., JOHN MEANS.

Adjourned to Friday, April 28th, 1893.

Q. 109. Mr. Means, I hold in my hand a letter of William Means of August 5th, 1888, which refers to a letter of yours of the 1st inst. Will you read that letter if you please, as a part of your testimony; the said letter of William Means is attached to your former deposition for complainants as Exhibit 49?

477

A.—

(Page 246.)

AUGUST 1ST, '88.

MY DEAR WILL.: Yours of 27th ult. is at hand. That part in regard to Metropolitan certificates was anticipated in part in mine of 28th to you. The certificate No. 171 held by the Circleville bank is one which it seems should have been surrendered and cancelled. So Mr. Sanders, examiner, found and also Mr. McConville and Edwards find. I cannot make out name and address to which you ask to have a 1,000 francs cabled. Please give it again and hereafter give me notice in time to avoid cabling remittances. Harry came home 28th and is very well. Father is fairly well. Have letter today from Cook.

Affectionately yours, JOHN MEANS.

Q. 110. William Means' letter, which is Exhibit 50 of your former deposition for complainants and is dated August 9th, 1888, I see here refers to yours of the 6th inst. Will you read that?

A.—

(Page 251.)

6TH AUGUST, '88.

MY DEAR WILL.: Yours of 1st inst. is at hand. Under date of 4th inst. S. F. Hunt writes me "Messrs. Gerke and Duckworth are making arrangements to settle their indebtedness under the trusteeship for five and six. In the written opinion furnished the agent by Judge Avery and Mr. Burnet it is held that the sum of $85,513.37 can be enforced against Means, De Camp, Gerke, Duckworth and Roth together and against Lewis with them upon such notes as have their dates in the year 1887. The note was dated March 25th, 1887, $12,500, and March 27th, 1887, $12,000. Wilshire notes are held to be notes for which William Means is individually liable. This amount is deducted from the total trustee liability. The amount which Duckworth will thus pay is $11,417.41. The 516 shares (trustee) are only applied as a credit on the $85,513.37. This does release any individual as stockholders to (to) (or in) (John M.) any incorporated company indebted to this bank. Mr. C. C. Jacobs, the — of (50 shares) of the stock connected with certificate No. 171 has spoken to me. Messrs. Follet, Hyman & Kelly, att'ys, in regard to the share sold him. He insists that the 50 shares thus sold him was legally issued and that he was entitled to demand from William Means the amount of premium included which was paid for
478 the stock. Mr. Roth is still absent from the city. I understand he claimed that there is no liability on his part for any of the trusteeship. * * * If we can succeed in compelling the bank to assume the Wilshire indebtedness it will greatly relieve us in the matter. It seems to me there should be a conference with Mr. Means, &c., &c. It is unfair that he should be compelled to assume the liability of others in the trusteeship matter. Perhaps he may write you at length concerning the business."

If you can give myself or Hunt any information on this matter of which he has written please do so. I don't understand the Jacobs matter. This is the certificate, remember, which the Circleville bank holds. All well.

Affectionately yours, JOHN MEANS.

Q. 111. In William Means' letter of August 15th, 1888, a copy of which is a part of your deposition for complainants as Exhibit 51, he refers to yours of the 8th of August. Will you read that letter as a part of your deposition?

A.—

8TH AUGUST, '88.

MY DEAR WILL.: Yours of 5th inst. is at hand. In accordance with your request have ordered cabled one thousand francs to Ctse. D'Adhemar, 10 Rue Lesuer avenue, Bois de Boulogne, Paris. Have not yet received advices and account of cost for the seven thousand francs sent before, as soon as received will advise you as to that and as to this. I suppose you wish the thousand francs to be sent on 20th inst. to Ctse. D'Adhemar as above, and will so send unless otherwise ordered by you. Could Col. Bright make or have any arrange-

ment for sale of Roan Mtn. S. and I. Co. stock. All well at home and at father's. Rose leaves tomorrow with some friends for a short trip to Old Point C. Love to Maggie.

Yours, JOHN MEANS.

Q. 112. Here is a letter from William Means of October 4th which is Exhibit 53 of your former deposition, which refers to your note received. Will you read that note as part of your deposition?

A.—

(Page 300.)

ASHLAND, KY., 1*st October*, 1888.

MY DEAR WILL.: Maggie's telegram of 26th was answered by wire to Hunt, Gilsey Ho., "Can't come East. Better come here"—also by letter and on 28th I wired: "Come here and settle
479 trust (Labrot)." Both these days I was in consultation with my attorneys as to the best manner of arranging for the trust. I have nothing definite in reply. Stockholders and others interested in the M. N. B. have an idea that you are to inherit a great estate some day and are urging the agent McConville to take judgment against you on which it is hoped to squeeze us now or realize in future. I find that it is necessary that you resign the Labrot trust and another be appointed with whom I must in some way arrange for the paying off the trust a large amount of money. Unless you come there with Maggie I cannot do anything, and money paid is lost as far as doing you any good or us any good in this matter. We are ignorant as to the terms and condition of the trust, as to what you owe or what you have belonging to it. Don't even know to what court to look to find it, nor who are your securities and it is simply impossible for us to act for any benefit. I notice in yesterday's Cincinnati Post "Means' bond forfeited for lack of renewal, &c., &c." I wire C. M. H. today for information. If you delay and crowd too much work into a few days it may be too late to do any good, or at an increased expense which may be beyond my ability to provide for. Come home this way and let me know when to expect you here. If Hunt can go to W. city, D. C., and stop here one day it may help matters and let him work as to him seems best. He knows what is the best.

Affectionately, JOHN MEANS.

Q. 114. William Means' letter on October 16th, 1888, which is Exhibit 54 of your deposition for complainants, refers to yours that encloses tax receipt, deeds, &c. Will you read the letter to which it refers, as a part of your deposition?

A.—

(P. 306.)

ASHLAND, KY., 10*th October*, 1888.

MY DEAR WILL.: Herewith find deed for execution by you release of West Va. lands sold for taxes, letters from auditor of State and

attorney relating to the Labrot estate received from Martha. Time would be saved if she sent direct to you such papers.

Yours affectionately, JOHN MEANS.

Q. 115. By memoranda on the back I see that said letter of 16th was answered on the 20th. Will you read your answer as part of your deposition?

480 A.—

ASHLAND, KY., *20th Oct.*, 1888.

MY DEAR WILL.: Yours of 16th inst. is at hand. Have also received box with lot of papers referring to Labrot matters from Y. S., but these are of no value to me, neither do I care about the Labrot will or who may be appointed trustee under it other than one may be easier, more accommodating in settling than another. What I desire and must have is to know just how much money is owing and to be paid to the trustee. As soon as I know this can act intelligently and can't do so until I do know. Will remit 1,000 francs Monday, 22d, to Ctse. D'Adhemar. Herewith find letter from her. Advise me what I shall do and sign your own name to letters. "Col." and "Major" might be of little use to me should I have to use letters as testimony hereafter. Saw Baker, Hunt and T. B Paxton in the city. P. is interesting himself in a friendly way and to good effect. We thought when you left the city the matters were in a good shape. I paid Samuel F. Hunt $500 to settle some debts for you, and today remit $1,600 to George Gerke on the syndicate debt. Send me your note this day in favor of father for $2,100 for these payments. Maggie, dear girl, would sacrifice her whole fortune if you needed it, but this you would not wish done, neither would I permit it to be. I think we can pay your debt, but I shall try to do so in such a manner that the amount shall not be a dead loss to ourselves nor to father's estate. If you cannot give your accounts exactly, approximate as closely as you can and advise me as soon as you have done so. I shall probably have to go East as Baker and Hunt do not think you able to come here soon. May not be able to leave home before the 1st prox., but shall try to do so soon after that date. Mary may go earlier. All well.

Affectionately, JOHN MEANS.

Q. 118. This seems to have been answered on the 29th. Will you read your answer to it?

A.—

ASHLAND, KY., *29th Oct.*, 1888.

Yours of the 23rd inst. came to hand last week enclosing blank note favor of father and letter from Dr. Conley. Yours of 24th came yesterday enclosing note for $2,100 favor of father. Will send the Labrot paper by express today to care of Dr. W. Higley as requested. We are expecting Maggie every day now. This afternoon I leave for Cincinnati and expect to see Baker and Hunt to-

481 morrow. Hunt is in Nashville today. All well.

Affectionately yours, JOHN MEANS.

Q. 120. Here is a letter of October 29, 1888, by William Means to you, which is Exhibit 28 of your deposition for complainants. Have you any letter that is in answer to that; if so, read it as a part of your deposition?

A. I don't think I answered that exhibit. I do not see any reference to it. Here is a letter, though, of the 24th.

Q. 121. Read it.

A.—

(P. 5, new book.)

ASHLAND, KY., 24 *October*, 1888.

MY DEAR WILL.: Yours of 22nd inst. is at hand, enclosing notes favor T. W. Means 15027, $5,041.67 and $7,400 of sundry dates, and copies of marriage contracts. The 1,000 francs remitted Ctese. D'Adhemar cost one hundred and ninety seven $\frac{13}{100}$ ($197.13) dollars, as advised today by bank. Herewith find a voucher received from Samuel F. Hunt $391.21, as he says, "from Dr. Wallace Neff." I suppose you understand it. Mary left Monday, 22nd inst., for the East. Will most probably see you by the time this reaches you. As soon as you have your account with Labrots finished advise me, as I think it best that I should come East then to see you and advise with you about some matters. We can talk in a day or two what it would take weeks to write. My desire and intention is to pay the Labrots, if it can be done, at the earliest moment and be rid of that, unless larger than your estimate given me of the amount; hope to settle it soon after a new trustee is appointed. You have not advised me when nor whether it is in Hamilton or Greene county court. All well.

Affectionately yours, JOHN MEANS.

Q. 122. There is a letter of William Means of November 22, 1888, which is made Exhibit 56 of your deposition for complainants, which begins, "Your letters received." Can you read, as part of your deposition, the letters that that refers to?

A. They are letters of the 16th and 19th of November.

ASHLAND, KY., 16*th November*, 1888.

MY DEAR WILL.: I wrote you this morning and desiring
482 to inquire further about the matter in this. Am advised that you can send me your note at one day in favor of father leaving the date to be filled in by myself. Please write in your letter giving the authority to fill up the date and state clearly the purpose for which the note is executed. You have your account as trustee Labrot estate, made out or nearly so, and can approximate the balance due. Make the note for, say, five hundred ($500.00) dollars less than will be due after taking out all your fees and dues. Use the form which Moore and Hagar made. Having this note here it will not be absolutely necessary that you and Maggie be here at the time of closing the arrangement of the part which we are to do and if the amount is less, as suggested, there can be no plea of want of consideration. If we do not hereafter get settlement with you for the balance overpaid it will not be a great matter. I think

you will understand this and that it will facilitate matters. I expect to be at Low Moor on the 21st and 22nd, Wednesday and Thursday, next week. Love to Mary and Maggie.

Affectionately yours, JOHN MEANS.

(P. 11.)

ASHLAND, KY., 19*th November*, 1888.

MY DEAR WILL.: When in Cincinnati I received letter from Judge Higley, dated 11th inst., about the transfer Roan Mt. stock, but could not reply to him as did not have his address. Will leave same in your name as requested. Today have his of 16th with Toledo deed. You had better send me the papers with regard to same property which I left with you. Do you know where the certificates of stock and bonds of the old Marietta & Cin'ti R. R. Co. belonging to father are? You had them when up at the 5th Street office. I remitted to S. F. Hunt sixteen hundred and twenty ($1,620.00) dollars, 17th inst., to pay premium on life-insurance policy in New York Mutual Life I. Co. Send my note at one day favor of father for that amount. Better use form by Moore and Hager. I think I left in N. H. gold pen. If so, send by sister. Mary's, of 13, came 17, and we hope to hear that Maggie can go to N. Y. this week. Think it important that she be moved as soon as able. Expected to meet Pearl at Lily's Sunday 11th, but she had some other arrangements and did not come to see me, as I hoped she would do. Please give me name and address of the Labrots in this country, I think you said there were two men. I have
483 had a good letter from Martha since coming home. Father and Tom well.

Affectionately yours, JOHN MEANS.

Q. 123. The letter of William Means, of November 22, 1888, seems to have been answered on the 28th. Will you read your answer?

A.—

ASHLAND, KY., 28*th November*, 1888.

MY DEAR WILL.: Yours of 22nd inst. is at hand covering notes to father, namely, $1,620, dated 17th inst., and one $45,000, dated 22nd inst., for the Labrot matters. I wish to settle with the new trustee by giving Maggie's note or notes at such time as we can pay them and to give her father's note, he holding your notes 45 M. I do not like, as attorney-in-fact for him, to make his note to myself. You will need to make power of attorney to some one to receipt for the Huntington money and to release the mortgage (better to S. F. Hunt or to myself). The Toledo paper for which I asked was the trust agreement by John R. De Camp, from which Judge Higley drew the conveyance from you. I left it with you for that purpose, and no doubt he, W. H., has it. You did not send the release as to 516 shares, and the M. N. bank stock, as trustee, for 5, and trustee for 6, which I sent you with mine of 14th or 15th inst. Have a letter from G. R. Dudley inquiring about the Labrot Covington tax. Replied asking him to apply to Judge Higley as to the amount and also to advise me of same. Today received letter from Jno. G.

Donaldson about Roan Mt. Co., expressing himself as friendly to you and desires to have me act with him in protecting this property. I shall answer him to like effect. Have not had transfers made yet of the Roan Mt. to father, but expect to do so on my next visit to Cin'ti or soon. Father and Tom are well. Hoping to hear that Maggie and yourself are better,

Affectionately yours, JOHN MEANS.

Recess until two o'clock.

Aftenoon session.

Q. 124. Will you read the letter to William Means, on your letter book, of 3d of December, 1888?

A.—

ASHLAND, KY., 3 *Dec.*, '88.

MY DEAR WILL.: Herewith find N. Y. draft, fifteen hun-
484 dred ($1,500.00) dollars for you which I made payable to the order of Warren Higley and today I sent twelve hundred ($1,200.00) dollars to George Gerke, to G. R. Dudley thirteen and $\frac{88}{100}$ ($13 88) dollars to pay Covington tax property of Eliza Labrot. Send your note payable to father for amount of these, viz., $2,713.88 as per form given to you. Can you tell me where to find the certificate of stock 15 shares Cincinnati Insurance Company, mentioned in the inventory of A. Labrot's estate. I have never seen that nor ever heard of it until I saw the copy of inventory. I hope Maggie is well enough to come to Lily's or home by this time and that you can take the trip to Carlsbad where your health may be improved. We filed your new bond for 1,000 M on Saturday last and this gives until February next before any new move can give you trouble in courts. Every one expresses to me the hope there may be no trial which I hope may be the case.

Affectionately yours, JOHN MEANS.

Q. 125. If you have a letter in your letter book to William Means of the 18th of April, 1889, be kind enough to read it.

A.—

DEAR WILL.: When in Cin'ti first of this month Judge Higley said you had agreed to pay him for going away with you and that he was to get three thousand ($3,000.00) dollars fee as attorney in the Labrot estate business. That if the court did not allow him so much you were to make it up to him, &c., &c. He was urgent to have me pay him five hundred ($500.00) dollars then or to remit to him this week. He has written to me about it since he went home. It was not convenient to pay him then and I had no advices from you that you desired me to pay him any amount. I did not pay nor remit. It struck me the pay for going and fee expected as attorney were very large. The account has been changed greatly from what it was 1st of December, '88. It was then shown that about $70,000.00 was due first December, 1888, but now it shows $75,000.00 due first July, 1888, to which add six months' interest making about $7,000.00 increase. Judge said you told him and

that he informed the heirs that this whole amount had been paid over to me before first of July, '88, (at which time as you know I had not even heard of it) in cash or cash assets and he was disappointed that I could not turn that amount over in cash on having had a little over a week's notice. He at first was inclined to charge me with deception but I think
485 Gen. Hunt satisfied him he was mistaken. To make the change in the account and such representations without advising me was pretty hard on me who have had so much to bear. You wrote me you had only asked of me to pay the trust. Yet you know that all I paid has been with knowledge or advice of yourself or counsel or both. You wrote me that young Labrot of this State would likely represent the heirs at settlement and that I could arrange for time of payment to suit my convenience. Now we find strangers for trustees, &c. When I deposited the 75 M hoping to secure a *nolle* I had been written to both by Baker and by Hunt to come to Cin'ti. As to the amount that I had to agree with McConville and it was on the opinion of Gen. Hunt so strongly expressed in the belief in favor of it that I made the pledge. The great trouble has been that with you so far off, Mr. Baker in Europe last summer that Gen. H. and myself could not avoid some mistakes which now you and madame at Y. S. complain of. When you left we thought only the 75 M yet to be paid and end your troubles so far as the U. S. was concerned and prepared to strain to do that, but to have had the 100 M forfeited was adding largely and the changes in business were such that I could not see my way to protect Messrs. Hanna and Holloway. In this whole matter I certainly have had no intention nor desire to pay any more than was needed. My own selfish interest was against any payment. Have done what I did for your benefit only and Gen. Hunt will tell you how earnestly we have striven to help you. Hoping you will remember how much easier it is to see an error when made than to avoid making it and give me the benefit of the thought,

Yours affectionately, JOHN.

Q. 127. If you have an answer to the two letters of April 2 and April 23, 1889, be kind enough to read it, which letters are a part of your deposition for the complainants, marked Exhibit 32?

A.—

(P. 52.) On letter head.

MAY 8, 1889.

MY DEAR WILL.: Yours partly written (yon side part on this side after you had received mine, sic) came duly to hand. Have waited Mary's coming here to explain to her before replying. Yesterday Tom A. showed me hers of Friday 3rd, which does not indicate her coming here. It was very hard to make up our
486 minds to ask you to come back, but only done after careful survey of the situation, and finding without question that justice to Hanna and Holloway compelled it to be done. Bankruptcy of the family would not have saved them clear on the hundred-thousand-dollar bond. We put the matter to Mr. Hanna, and

he said cable to come. With 75 M in McConville, if we do not get it back, it will be a serious matter to pay the Lab. Trust which has been changed from $70,575 as due 1–12–'88, to $77,725 as due 1–7–'88, in the accounts for probate court without asking or advising me. You say I told you to answer the heirs the estate was all right. What I wrote you was: "You may assure them you have placed your affairs in my hands, and that I shall do my best to straighten them out." I was then afraid to say positively, or have you for me that I could and would pay the whole. As to keeping it a secret from Hunt. He asked me about it before I had heard of it from you, and I have told him of the $700 paid the man at Frankfort, which I suppose was all there was of the matter. I never knew until the receipt of your letter about the middle of July, 1888, that you held the trust, or that there was anything unsettled of it. Hunt had, no doubt, heard of the matter from madam or from friends of the heirs, and knew more than I did. Then, afterward, the 10 bonds and the Huntington note came to me through his hands. He saw the account which Higley made December 1, 1888, and that brought out April, 1889, and understood the matter without need of any explanation on my part. Neither Mary nor yourself seemed to understand, nor your wife the financial condition. Pig iron and products are lower than ever before. You can hardly imagine how depressed everything about Portsmouth, Ironton and Ashland depending on iron can be. Newer regions are producing greater quantities and at less prices than the H. Rock region can hope to do. The iron furnaces here are increasing cost, or exhausted properties entirely. The Hamilton F. has lost money from the start. I doubt whether any purchaser could be found for M. K. & Co.'s property at what we paid Mr. Sinton for Ohio and Union. Just so with Bellefonte. There is not one to buy, *by* no matter at what price offered. Norton shares have been sold at 25 per cent. of par value, and if we try to sell what our family had, we could not get 10 per cent. The Norton has not made one per cent. since started, and now cannot keep even. My stock in A. C. & I. Co. is, so far as selling, or even borrowing on it, no better.

If I borrowed, don't see where I could hope to get to re-
487 pay. We in January reduced capital of Ashland N.
bank 40 per cent., and even now our loan, only about equal our capital. Business, profitable business, seems to have utterly stopped about here. It looks as if shortly our loans will be less *in* the capital. There is nothing in the coal business for profits, and all or nearly all the timber being gone from off our land, there is nothing to make them salable. This is, no doubt, to you a new and gloomy prospect, and you may think I have a panic, but I think — is the truth. Everything we have is in this region, and the worst of it, too, we are all in the same things, and these of no avail now, if ever to be hereafter. Our steamboat stock which heretofore has been so good, is unpromising now as any. The railroad on the banks this side the river, as well those near on other side, making a dead fight against the boat. If the packet company should lose a boat, it is doubtful whether would or could build another to

take the place. In the year past, 1888, we received dividends, part from profits in years before or by sales of accumulated stocks of iron, etc., etc. The payments we made for you were out of these, and from sales of the best things we had, and in our anxiety to get you clear, we overlooked — of all. We failed to see that what had heretofore been so good, was done producing, and that all we have is in such property, and all going out at and about the same time.

Q. 128. I see William Means' letter of May 7, 1889, which is an exhibit to your deposition for complainants No. 41, begins: "I suppose General H. has communicated with you." Will you read the answer, if you have one, to that letter?

A.—

(P. 55.)

MAY 10TH, '89.

MY DEAR WILL.: Yours of 7th inst. is at hand asking me to send madam $500 at Y. S. Have heard nothing from Mr. Hunt since he left Cincinnati. Assurances from madam are not to be esteemed for truthfulness. Have letters from her that are outrageous, vindictive and malicious. There was no joke in her seeing John Little, lawyer, and his signing himself attorney for Mrs. M—— as he did last month in a letter to Hunt. It is I agree with you better to keep her at Y. S. but she should be made to understand that she must be thankful for what we give. She has had $1,250 in less than six months. If she needs $500 now she is spending faster than I can afford for my own family. You and Hunt should ask or have her write respectfully to me that she needs money. As I have said above and
488 written you a few days ago this money question is a serious one. I don't know how Mary's affairs are. She put them into Tom's hand. He holds 102 M and she 27 M in the Norton worth little if anything. He borrowed large sum and invested in pig iron some two or three years ago. Has paid interest and the iron would not now sell for original cost losing interest. Expenses must be cut down by all of us to very small amount to keep within our income. Mary and Maggie find it hard to understand that their incomes can stop or the principle on their fortunes be lost as I much fear the last is the case to very great extent. Have another letter from H. very urgent that I shall send him $500 on services as attorney in the ex'c'r and trust matter. Your letter did not make it plain to me what you supposed might be due him on account of what you or sisters promised his going with you. I did not know that anything had been promised him on that score. Understood he was going to England while you were going to the continent and when he told me in Cincinnati was the first I heard he expected anything or was to. I am almost beside myself to know what to do, have no one to take counsel with here, do not like to and have not troubled wife and children with more knowledge than could help. Have impressed upon them need of economy, which they do not understand to be so urgent as I do any more than Maggie or Mary do. As to the H.'s I am not sure that I have more firm faith in them than madam has. As to their impecuniousness it is push-

ing on them. Have no idea that the court will allow him what he now asks as an advance and am not sure as to what he might do to alarm the heirs on the other side. You will remember that you executed a quitclaim deed to me for your interest in the Toledo. The dower interest has not been released by madam. If it was sold for the purchase-money she would have no dower. Could you suggest to her proposing to release to get on good terms with me again that she really gives nothing by so doing.

Q. 129. Mr. Means, I see here a letter of William Means referring to your letter of the 8th of June, 1889, which letter of William Means is Exhibit 38 of your deposition for complainants. Will you read your letter of the 8th of June, 1889?

A.—

JUNE 8TH, '89.

DEAR WILL.: Yours of 1st inst. came to hand yesterday. Herewith find draft three hundred ($300) dollars endorsed payable to the order of Sister Mary A. as requested by you, acknowledge
489 by receipt to me not in letter with other matter. Your wife threatens to cause me all the trouble that may be in her power and I desire to be able to show receipts for money furnished you. Don't you undertake to do anything about the 75 M; if by any pretext McC. his attorney or his committee it could be set up as yours they would attach same and give me no end of trouble. It has caused me enough already. Baker, Hunt and myself will manage it and any interference on your part might defeat our endeavors. Am certainly as anxious about it as you can be needing it for the trust if don't get it for that it will be a very serious matter for me. Yesterday saw Gen. H. He came to Ironton on business of his own wiring me to meet him. He told me that you complained that the trust had not been settled, paid. It has not been and for lack of funds to pay with. (Even if had it desire to use the 75 M if it possibly can be had for that purpose. Sic.) In my last letters to you have tried, it seems without success, to impress on you that we are not so rich as has been imagined by our acquaintances or neighbors. That property which formerly we esteemed and was valuable has been exhausted and is now like an empty barrel or worn-out garment and everything we have is in iron or depend on iron in this H. Rock region, and other regions are now producing at cost and quality with which this cannot compete. The payment-last year were partly out of the savings of years, and used once are gone forever. There is now no selling any property such as we have many believing that the iron business is done for hereabouts. We having no investments elsewhere in other things which do pay I do not see where income to father and myself this year can come to exceed the interest on amount of trust as shown in the last account. These facts I wish to impress on yourself and Mary. Tom A. and Maggie do now partly appreciate the situation but not fully so but they are coming to all of us so that before long there can be no mistaking the situation and for myself is the feeling that the ability to earn, manage or do more in the way of business to start anew has

gone from me and hoping you may both be in better health than I feel myself I am affectionately yours,

JOHN MEANS.

Q. 130. If there is any other letter of date prior to the one you just read, that you have not read, please read it.

A.—

25TH MAY, '89.

DEAR WILL.: You have not replied to my letter in which
490 explanation was made by me as well as I could of matters here and one as to assurances by your wife. I have two letters from her of 21st and 22nd inst., both of which show that her intention is to give all trouble she can to Maggie and myself, in fact to the whole family. Have letters from Gertie in which are vague hints as to Martha's intentions that she keeps up a large correspondence with some one or more here whom Gertie says must be bitter enemies of mine. Who it can be or what they write her is more than I can imagine. I don't think that ever her name is mentioned by me to any but Maggie and Tom A. You and Mary should be very careful as to what you say or write to madam. Gertie writes that she and Patty propose to pay you a visit. You and Mary should be very careful as to what you say to them as she will worm it all out of them and add or subtract as may suit her purpose. I find it very hard to remember what I have done or said within some months, or to determine as to any course of action to be taken. Am very fearful that in no very great length of time, if living, will be in much same condition that father is. It is a gloomy aspect but am inclined to take that view of everything and cannot help it. Friends are noticing and advising to be cheerful, not to worry, &c., &c., but can only answer that cannot help it, cannot throw off this feeling nor forget; would be glad if I could; so far as tending to business goes am of no more worth than woman or child. McConville has negotiated sale of Toledo property. Have no doubt she will refuse to relinquish dower right for any reasonable sum and may defeat the sale altogether by refusal. Was ever such an entangled business before? So far McC. has refused to return the 75 M which we must have if we pay the trust. Am going to Cincinnati next week and feel when leave home now uncertain that will ever get home again in health of body or mind.

Q. 131. I see by William Means' letter of July 2, '89, which was Exhibit 42 to your deposition for complainants, that he refers to yours of the 26th ult. Will you read that letter as a part of your deposition?

A.—

26TH JUNE, '89.

DEAR WILL.: On the 18th inst. R. L. Bright wired me this: "Am bringing suit against Athens Mining and Mfg. Co. to collect several claims including Gurner and William Means. Prompt action necessary. Do you approve? R. L. B." Answered "I know nothing of claim. William needs all you collect." Now, the letter herewith

is at hand from Bright. As I never heard of any claims of
491 course I could not give advice or proof as to suit and did not wish to put myself in for an attorney fee with nothing to gain. Return Bright letter to me and if you know where the note or evidence of claim is further have it sent to me or to Bright and advise what you wish done. I don't know Gurner. Don't wish any correspondents in the matter. Hunt has never mentioned the A. M. & M. Co. or claimed to me so I suppose knows nothing of the matter. Gertie writes me that Martha will send the girls here to father's this week and she, M., will go to Ironton to Mr. Campbell's. With love to Mary.

Q. 131. I see by the memorandum on the back of this letter of William Means that it was answered on the 9th. Will you read the answer?

A.—

9TH JULY, 1889.

DEAR WILL.: Yours of the 2nd inst. is at hand telling me that you have referred Col. Bright to me for information about the very same matter of which I inquired of you in a letter to which yours is an answer. I had written plainly that I had never heard of any claims of yours against the Athens Company. Why you write to him and to me so is more than I can imagine. Other than power of attorney to sell shares gotten from McConville receiver I have no papers from you nor information relating to the Athens Company. And such advice as I have from others is that the Athens Company stock is of no value. You seem to forget that I had no knowledge of your business affairs until you quit looking after them and that you have been so far from me and from any accounts or papers which you may have had and that my first information comes from some outside source as in this case from Bright. Yet you write to me or refer others to me as if I had been always familiar with and not been intentionally kept in ignorance of your affairs. This course by you has made me much trouble, taken much time and made expenses to attend to and why done now is curious to me that you continue to assume my knowledge of things never heard of by me. (Four or five words at bottom of page 63 cannot be read. On page 64 the letter continues as follows:) into is such as he might advise or recommend. I should be very fearful to trust his judgment or lend money for his operations especially if Athens Co. and Roan Mtn. are good samples. Have been and am now feeling very bad and have not been well since December last felt that I should have better medical advice than can be had here with probably change of
place and yet hesitate to go on account of the expense. I
492 wish you had never left home and that Mary was here again. It seems as if everything went wrong since you left home and more since she left here in Oct. As to movements of Martha and daughter, I only told you what Gertie had written me they would do. Maggie and Tom are well. Father is not very strong and his memory is now very poor. Love to Mary and the girls if with you.

Affectionately, JOHN.

Q. 132. Mr. Means, William Means' letter of date Yellow Springs, September 5th, 1889, and which is Exhibit 22 of your deposition for complainants—have you a copy of any letter that is an answer to it?

A. I never made any answer to that letter.

Q. 133. Or any letter that that is an answer to?

A. It is not an answer to any letter.

Q. 134. There is also a letter of William Means of September 17, 1888, which is Exhibit 52 of your deposition for complainants, which is in answer to yours of 12th Sept., 1888, will you read yours of the 12th?

A.—

12TH SEPT., '88.

MY DEAR WILL.: The enclosed was sent to me by Martha when it should have gone to you. Advise me what you wish done, that is, how much and to what address sent. Col. Bright's letter of 3d inst. to you came last night. Yesterday received letter from Paxton & Warrington about the Gerke $85 M asking me to meet them today. I wired Hunt asking if he would be in Cin'ti tomorrow if so would go down. Have no answer, think he has probably gone to N. Y. May go down at any rate to see them. Have taken up the Circleville note and suppose Hunt has surrendered the certificate 171 M. N. bank. Get up your account of the Labrot Trust as soon as you can. Would like to know just what to be provided for. All well.

Yours affectionately, JOHN MEANS.

Q. 135. I see by the memorandum on the back of a letter of William Means of September 17, 1888, that you answered it on the 22nd. Will you read your answer if you have not read it?

A.—

22D SEPT., 1888.

MY DEAR WILL.: Yours of 17th inst. is found on return from Cin'ti where I met S. F. Hunt and others, he leaving for N. Y. city same night and has no doubt seen you and explained such arrangements as we made. The case is set for 15th Oct. and we
493 thought you had best come home soon. Would it not be well to come this way, stop here and go from this home direct or via Cin'ti? I hope C. W. Baker will be in Cin'ti first week in October. All well.

Affectionately yours, JOHN MEANS.

Q. 135*b*. Mr. Means, have you found any other letters in your letter book which you sent to William Means; if so, will you please read them as a part of your deposition?

A. I find 16th of August, '88:

MY DEAR WILL.: Yours of 10th inst. is found on my return from Cin'ti where I spent two days mostly with Mr. S. F. Hunt. We are both decidedly of the opinion that it will be best to pay the Circleville note and surrender the certificate No. 171 to Mr. McConville.

We went to see Mr. Gilmour about contents of your safe. He hunted but could not find the combination. Said he would look further. Consequently we could not get into safe. If he finds it, the combination, is to surrender the contents of safe to Hunt who will keep until I see him. We felt rather shaky at the result. I find however that as many coupons as are usually presented and paid at the First Nat'l bank, Cin'ti, have been paid save and excepting ten (10) which I hope are yours and now hope contents of safe are all right. We have not yet received the coupons paid nor been advised as to the numbers of the bonds from which they are taken. Am expecting to reach N. Y. Tuesday morning 21st. That and the next day will be occupied with Low Moor business after which hope to see you and our good little sister. Have letters from Rose and from Cook. Came home at four this morning and have not seen father and Mary. Tell Maggie that Hattie is mourning for Waxie who died yesterday. Tom and William are attending to a decent burial of the faithful old horse. With much love am affectionately yours,

JOHN MEANS.

And I also find another letter of date 19th September, '88:

MY DEAR WILL.: Herewith find check thirteen $\frac{15}{100}$ dollars of George T. White, assignee Osage Iron Works Company just received from Martha. I am waiting for boat for Cin'ti to meet Gerke, Duckworth and De Camp. All well. Hattie and Tom came home yesterday.

Yours affectionately, JOHN MEANS.

494 I also find another letter of date 4th of October, 1888:

MY DEAR WILL.: These about Mt. Auburn Cable R'y meeting—stock still in your name and Woods, Yeatman & Co., received from Martha. My references to trust last week meant the Labrot Trust as I shall have to settle that either through Maggie or Tom Adams. You should tell Maggie all about it. Leave for Low Moor tonight. Any telegrams to me will be repeated to me there if of importance.

Affectionately yours, JOHN MEANS.

Q. 135*e*. Mr. Means, have you prepared a statement of all securities handed you February 15th, 1888, by James McConville as receiver of the Metropolitan National bank when you paid the $125,000 to him; if so, will you read the same as a part of your deposition?

Question and answer objected to as irrelevant and incompetent and for the further reason that the witness has heretofore testified on the same subject.

A. I have prepared such a statement and now read same which is as follows:

Statement of Par Value of All Securities Handed Me 15th of February, 1888, by James McConville, as Receiver of the Metropolitan National Bank.

Certificates.

223 shares Metrop. N. bank ($100 ea.)	$22,300 00
320 shares Dist. & Cattle Feeders (Whiskey Trust, $100 ea.)	32,000 00
500 shares Roan Mtn. Steel & Iron Co., $100 ea	50,000 00
35 shares Ashland Nat. bank, $100 ea	3,500 00
10 shares Means, Kyle & Co., $1,000 ea	10,000 00
166⅔ " Athens Mining & Manfg. Co	16,666 ⅔
5 shares Tellico Manfg. Co	5,000 00
63 " Cin'ti, Big Sandy, Portsmouth & Pomeroy Pkt. Co., 100 ea	6,300 00
30 shares Mt. Auburn Cable R'y Co., $100 ea	3,000 00
9 shares Norton iron works, $1,000 ea	9,000 00
2 bonds Mt. Auburn Cable R'y Co	2,000 00
Total par value of stocks, shares & bonds	$159,766 ⅔
495 1 receipt for 2nd call of 10 % Covington Transfer R'y Co	500
1 receipt for call of 40 % Manufacturers' Land and Improvement Co	2,000
Toledo real estate, a mortgage on Wm Means, ¼ interest in property (bought at $28,000.00) for whole on which ⅓ had been paid on the whole and Wm. Means had only paid on his ¼ interest	2,333 ⅓
Findlay R. E., a mortgage on Wm. Means, interest undivided in certain real estate value unknown	
Total	$164,600

Q. 135*f*. Mr. Means, have you also prepared a statement showing the value of all securities received by you from James McConville as receiver of the Metropolitan National bank on the 15th of February, 1888, according to the value placed on same by William Means in his statement handed you on the 11th of February, 1888, so far as he valued same therein and the value at par of the residue of said securities so received; if so, will you read same as a part of your deposition?

A. I have, and now read same which is as follows:

Securities Received from McConville as Receiver M. N. B. on the 15th of Feb'y, 1888, as Valued in Part by Wm. Means in His Statements Handed Me 11th of Feb'y, 1888.

320 shares Dist. & Cattle Fdrs. (Whiskey Trust) at 50 %			$16,000 00
500 shares Roan Mtn. Steele & I. Co.,	at 60		30,000 00
35 " Ashland N. bank,	par		3,500 00
10 " Means, Kyle & Co.,	"		10,000 00
166⅔ " Athens Mfg. Co.,	at 25		4,000 00
5 " Tellico Mfg. Co.,	par		5,000 00
2 " Cable R'y (Mt. Auburn) bonds,	"		2,000 00
Receipt for $500 paid in Covington Transfer R'y Co.			1,000 00
Receipt for paid Manfr. Land and Improvement Co.			2,000 00
Toledo R. E.			10,000 00
Findlay R. E.			15,000 00
(223 shares Metropol. Nat. bank at 132)			29,436 00

N. B. (220 shares were not in M. N. B. but pledged to the Ashland Nat. bank.)

496	63 shares Cincinnati, Ports., Big Sandy & Pomeroy Pkt. Co.,	at par	$6,300
30 shares	Mt. Auburn Cable R'y Co.,	"	3,000
9 "	Norton iron works,	"	9,000
			18,300 00
			146,236 00

(Not estimated by Williams.)

Examination by Mr. ANDERSON cont'd:

Q. 135. Mr. Means, have you prepared a statement showing the amount realized on William Means' collaterals that you received from James McConville, receiver of the Metropolitan National bank? If so, will you read the same as a part of your deposition?

(Question and answer objected to as irrelevant and incompetent.)

A. I have prepared a statement which is as follows:

"*Amount Realized on Wm. Means' 'Collateral' from McConville, as Receiver of the Metropolitan National Bank, when Sold.*"

320 shares Dist. & Cattle Fdr. (Whiskey Trust) T. W. M. B. page 194, 20 shares, sold		$775 00	
100 " " page 200		3,425 00	
200 " " " "		6,850 00	
		$11,050 00	$10,295 00
Dividends Dist. & C. Fdr. "Whiskey Trust."			
" Wm. Means "cur. acc't" W. M. B. page 188		$480 00	
" page 190		160 00	
" " 190		160 00	
" " 191		160 00	
" John Means		817 67	
" note No. 215, *i. e.*: ($125,911.74) 194		106 67	
			1,884 34

500 shares Roan Mtn. S. & I. Co. See T. W. M. B. 198 at $30.00 cr. on Wm. Means' note No. 215	.....		15,000 00
35 shares Ashland National bank, T. W. M. B. 179, 185	3,500 00		
9 shares Norton iron works, T. W. M. B. 179, 185	9,000 00		
			12,500 00
63 shares Cin'ti Ports. Big Sandy & Pomeroy Packet Co., T. W. M. 179, 185	6,300 00		
497 10 shares Means, Kyle & Co. T. W. M. 179, 185	10,000 00		
			16,300 00
2 shares Mt. Auburn Cable R'y Co. bonds, T. W. M. 181, 185	.....		2,000 00
5 shares Tellico T. W. M. 199, 200	.....		2,625 00
Toledo real-estate mortgage T. W. M. 203	.....		2,314 61
223 shares Metropolitan N. bank, Agent McConville.			
Dividends Metropol'n N. bank No. 1, 20 % T. W. M. B. 196	4,460 00	Credit'd on William Means' note 215.	
Dividends Metropol'n N. bank 2—10 % T. W. M. B. 196	2,230 00		
Dividends Metropol'n N. bank 3—5 % T. W. M. B. 200	1,115 00		
Dividends Metropol'n N. bank 4—5 % T. W. M. B. 202	1,115 00		
Dividends Metropol'n N. bank 5—5 % T. W. M. B. 204	1,115 00		
Dividends Metropol'n N. bank 6—1 % T. W. M. B. 206	223 00		
			$10,258 00
Total amount realized	.....		$73,931 95

The original of above statement is marked (3).

Q. 136. I will ask you if you have prepared a statement showing the collaterals received on February 15, 1888, from James McConville, receiver of the Metropolitan National bank, that were afterwards returned to William Means on or about October 23, 1890; if so, will you read same as a part of your deposition?

(Question and answer objected to.)

A. I have; it reads as follows:

"*Collaterals Received* 15*th February*, 1888, *from James McConville, as Receiver Metropolitan National Bank; Returned to William Means* 23*rd October*, 1890.

Covington Transfer Railway Co. receipt 2 on call 10 %	$500 00
Covington Manufacturers' Land & Improvement Co. call 40 %	2,000 00
Certificate 30 shares Mt. Auburn Cable R'y Co. at par	3,000 00
Certificate 166⅔ Athens Mining & Manfg. Co. at par	16,666 ⅔
Total at par value	$22,166 ⅔"

Original of above statement is marked 4.

Q. 137. Have you also prepared a statement showing the
498 collaterals received on the 15th February, 1888, from James McConville, receiver of the Metropolitan National bank, still in your hands; if so will you read same as a part of your deposition?

(Question and answer objected to.)

A. I have; it reads as follows:

Collaterals Received 15th February, 1888, from James McConville, as Receiver Metropolitan National Bank—Still in My Hands.

Findlay mortgage for.....	$10,000.00
Wm. Means' "estimate"...	15,000.00
Certificate 223 shares Metropolitan Nat. bank at par..	22,300.00

Original marked (5).

Q. 138. Have you also prepared a statement of securities and things you have received from William Means himself, and the date upon which you received them; if so, will you read the same as a part of your deposition?

(Question and answer objected to.)

A. This is a statement of things received from William Means himself, which is as follows:

"*Statement of Things Received from William Means Himself.*

Rec'd 1888, Feb'y 10th, 69 shares Cincinnati, Portsmouth, Big Sandy and Pomeroy Packet Co.—transferred to Thomas W. Means 11th Feb'y, 1888, entered on his books under date of 13th February, 1888, Journal B, page 179, at par.....	$6,900.00
February 18th, 423 shares Roan Mountain Steel and Iron Co. Of these 417 shares were transferred to Thomas W. Means and credited on William Means' note (No. 215 of 15–2–'88) of $125,911.74, entered under date of 21 Jan., '89, Journal B, page 198, at $30....	12,510.00
Feb. 18, '88, and six shares were returned to William Means (see Ex. 30) 23rd Oct., 1890, at par....	600.00
Feb. 18th, Covington Transfer R'y Co. for first call 10 %, returned 23rd, Oct, 1890, to William Means...	500.00
Feb. 18th, Manufacturers' Land and Improvement Co. Covington for call, returned 23rd Oct., 1890 to Wm. Means....	250.00
Feb. 18th, 200 shares Kentucky Iron, Coal and Manufacturing Company transferred to Thomas W. Means and credited to William Means' 'current account' under date of 2nd April, 1888, Journal B, 183 page, at 50 %....	5,000.00
July 18th, Frank Huntingdon's check credited William Means' 'current account,' Journal B, 188 page	350.00
Sept. 6th, 10 coupons Lex. & Big Sandy R. R., Eastern division (A. C. & I. R'y Co.), credited William Means' 'current account,' Journal B, 190 page, under date 7th September, 1888....	350.00
Sept. 28th, George T. White, assignee Osage Iron Works Co., credited William Means' 'current ac.,' Journal B, 191 page.....	13.15
Total.....	$26,473.15"

Original marked (6).

Q. 139. Have you prepared a statement showing collaterals received 19th March, 1888, from the Ashland National bank which was pledged to secure William Means' notes 216 and 217 respectively for $6,000 and $9,000? If so, please read the same as a part of your deposition?

(Question and answer objected to.)

A. Yes, which is as follows:

"Collateral received 19th March, 1888, from Ashland National bank, which were pledged to secure William Means' notes, viz., No. 216, of $6,000.00, and No. 217, of $9,000.00.

220 shares Metropolitan Nat. bank, on which were dividends made and credited of said notes, to wit:

"Nos. 1 and 2—30%	F. W. Means' Journal B. 196, No. 216	$2,640.00
	B. 196, No. 217	3,960.00
" " 3—5%	T. W. Means' Journal B. 200, No. 216	440.00
	No. 217	660.00
" " 4—5%	B. 202, No. 216	440.00
	No. 217	660.00
" " 6—1%	credited on note No. 215, see T. W. Means' Journal B, 206 page	220.00
	Total amount	$10,120.00"

Q. 140. Have you prepared a statement showing the collaterals received of William Means by the hands of Samuel F. Hunt, and belonging to the Labrot estate? Will you read the same as a part of your deposition?

500 (Question objected to as incompetent.)

A. I think I have, which reads as follows:

"Received of William Means by the hands of Samuel F. Hunt, and belonging to the Labrot estate:

1888, Sept. 6th, by express, 10 Lexington & Big Sandy R. R., Eastern division, bonds of $1,000.00 each	$10,000.00
1888, in December or November, one mortgage note of H. D. Huntington, of which Frank Huntington was the payer in amount	10,000.00"

(Answer objected to as incompetent.)

Q. 141. Do these several statements which you have testified to, Mr. Means, constitute all the securities you received in any way from William Means, after the failure of the Metropolitan bank up to the present time?

A. I think they do.

Q. 148. I will ask you, Mr. Means, if you have a copy of a letter to William Means, in which was enclosed a check for $700.00, that

was given him by his father to make his account even one hundred thousand, in 1884? If so, will you read that?

(Question objected to as irrelevant and incompetent.)

A. I have; it is on the same letter-head.

"14TH MAY, 1884.

William Means, Esq., Cincinnati, Ohio.

DEAR WILL.: Father today made a division of notes and cash which now leaves charged to your, Mary's, Maggie's, and my account, an even $100 M each. Herewith find his check for seven hundred ($700.00) dollars to your order, and note of Ashland Coal & Iron Railway Co. dated 11th March, 1884, at one year, interest at 7 per cent., secured by 4 collateral bonds Nos. 418 to 421 inclusive. I do not send the bonds with these, but have kept them at the bank. All well.

Hattie and Rose went to the city today.

Yours truly, JOHN MEANS."

Q. 149. I will ask you if you have a letter of Mr. William Means in reply to the one you have just read. If so, will you read it as a part of your deposition?

(Question and answer objected to for the same reasons interposed to the last question and answer.)

A. I have. Letter-head of Metropolitan bank.

501 "CINCINNATI, *May* 16, 1884.

"DEAR JOHN: Yours of 14th at hand with note of A. C. & I. R'y Co. March 11th, 1884, at one year for $4,000.00, and interest at 7 per cent., secured by four collateral bonds, same company, and Thomas W. Means' check on Ashland National bank for $700, and I have some of the Norton Iron Work stock at Ashland National bank, and would be pleased to have the collateral bonds and stock put together.

I have just arrived from N. Y. and am quite busy.

Truly yours, WILLIAM MEANS."

Q. 150. I will ask you to read also a letter—I believe of yours to William Means—of September 4th, 1880, as a part of your deposition.

(Question objected to as irrelevant, incompetent, and nothing to do with the case.)

A.—

"ASHLAND, KY., 4 *September*, 1880.

William Means, Esq., 55 Fountain square, Cincinnati, Ohio.

DEAR WILL.: Herewith please find father's check on Ashland N. bank, five hundred and ninety $\frac{46}{100}$ ($590.46) dollars, which he sends you to bring your account on his books up to even thousand. I pay Mary and Magg. and him the amounts needed to bring Mary and Maggie's accounts up even thousands. While I do not believe

any of you have any feeling of jealousy or wrong that he has heretofore paid or given to me more than to any other of his children, I do desire that his distributions shall be made hereafter so as to bring the rest of you up to the amounts paid myself. And as the girls have each received less than either of us you can very properly, and without selfishness, or appearance of it, advise him to this course, and I hope you will do so and not hesitate, because it may be to your own advantage at the same time. Hattie and Rose are in the mountains of Virginia, but we look for them home today.

Harry and Cook leave Monday for Marietta. All well.

JOHN MEANS."

Q. 151. I will ask you now to read William Means' answer to that letter as a part of your deposition?

(Objected to as irrelevant and incompetent, and having nothing to do with the matter at issue.)

A. The letter reads as follows:

502 "CINCINNATI, *September* 8, '80.

DEAR JOHN: Yours of 4th inst. enclosing advice and check on Ashland National bank just received by me after several days' absence at Yellow Springs.

I suppose the amount ($590.46) is proper to make balance even thousands, though I have no time as yet to examine it.

I approve entirely of your views as to bringing up those who have not received so much as we have, and will recommend it.

Mary and Emma Campbell are expected at Y. S. soon. My wife was quite ill yesterday and I feel that her health is about as infirm as last year. The children are well.

I am, yours truly, WILLIAM MEANS."

(Answer objected to as irrelevant, incompetent, and not germain to the issue.)

Q. 164. In your letter of 24th February, 1888, after stating certain securities that you did receive from William Means, you added "I think it may be prudent and safer to send me authority to dispose of this like that sent in regard to the others. After the storm blows over we can arrange about them." What does the expression "After the storm blows over" refer to and mean?

(Objected to because witness has been examined upon the letter before, and because it asks witness to explain in his own way that which does not appear upon the face of the letter, attempting thereby to weaken the force of the letter by explanations favorable to himself made five years after the writing of the letter, and when a litigation has arisen in which the court is called upon to construe the meaning of the witness from the context of the letter, and not as to what construction the writer and witness puts upon it.)

Counsel for plaintiffs again report their intention to reserve the argument of this case until it shall be submitted to the court.

A. I mean in that expression, the fear of criminal indictments as being a storm that was to be dreaded, that we wanted passed.

(Answer objected to because the mere matter of money, whether he had much or little, should have nothing whatever to do with any evidence of a criminal nature that he might have committed against the laws of the country, or any trial that could be had thereon.
503 Neither the mere fact of the witness, John Means, having all the securities and property and money of every kind and description in his possession, would have no effect whatever upon any such transaction.)

Q. 165. State whether any of the securities set out in these several statements that you have prepared and made a part of your deposition, were turned over to you absolutely; if not, how did you hold them?

(Question objected to as irrelevant and incompetent, so far as the litigation is concerned, it makes no difference for what purpose they were turned over.)

A. I held the securities that were received from William and the bank receiver, on the 15th and 18th of February, as for my father, Thomas W. Means. The securities from the Labrot estate we held as belonging to the Labrot estate, and was the $20,000.

(Objected to because it matters not for the purpose of this case how he held them, or what he did with them.)

Q. 166. The question I am seeking to know is, whether they were assigned absolutely, or whether they were assigned as collateral?

A. I hold them as collateral. I had not purchased them either for my father or any one else.

(Question and answer objected to as interposed and assigned to the last question and answer.)

Q. 167. In your letter of October 15, 1888, the William Means which has been introduced in evidence—I think it is in that letter—you referred to the fact that you had consulted Colonel Moore and Mr. Hager, state how you came to consult with them as to the matter referred to in the letter?

(Question objected to because it is irrelevant and improper. Witness has been asked about it before and testified, and he is now asked to testify about a written document without specifying what part of that writing he is attempting to explain.)

A. I think it was necessary to secure my father for payments made which had been charged on the current account, and that it was better to take the note or notes to secure my father or his estate, if he should die before the matter was settled, and to be sure that I was right I consulted the attorneys, Messrs. Moore and Hager, and they confirmed the opinion which I had in my mind, and advised the taking of notes, and prepared the form which should accompany the note as additional evidence.

Q. 178. Have you discovered any letter in your letter book
504 that has not been put in evidence, written to William Means prior to your seeing him upon this occasion at New Haven, with reference to the bond and the $75,000 left with McConville, and the note for same. If so, will you read it as a part of your deposition?

(Question objected to for the same reasons.)

A. I have not the evidence taken Saturday, and I am not sure whether this letter was read:

"ASHLAND, KY., *Nov. 3rd*, 1888.

MY DEAR WILL.: Have just returned from Cincinnati, where have been all the week at work with M. N. bank committee of stockholders, McConville, Hunt and Baker.

We hope to get dismissal, *i. e.*, a *nolle p.* as result of our conference. If so, am to pay $75,000 to the agent of the bank's stockholders, and have deposited that amount with a trustee. Will explain when I come East.

Make your note at one day, favor of father, $75,000, dated 1st inst. (the time I made deposit), and give the note to Mary to hold until I come. Expect to start Monday or Tuesday (5th or 6th) and to reach you Thursday or Friday.

Hoping Maggie is much better and will be able to come home with me. I cannot stay more than one or two days, and then must come home, and to Cincinnati. Don't be concerned about raising your bond. Saw Judge Sage about it and he explained kindly why he raised the amount.

Yours truly and affectionately, JOHN MEANS."

(Objected to for the same reasons.)

Q. 179. Who is referred to in that letter as Mary A.?

A. Mrs. Adams; she was there with him.

(Letter passed for the present.)

Q. 182. Have you discovered any other letter in your book that has not been read, to William Means?

A. I found one on page 139 in my letter book of February 13th, 1888, which is as follows:

"13TH FEBRUARY, 1888.

William Means, Esq., Cincinnati, Ohio.

DEAR WILL.: I had expected to come down Tuesday night in Big Sandy. Be in Cincinnati, Wednesday, 15th. Last evening I received telegram from E. F. Williams, which I cannot under-
505 stand, unless he wishes me to stay away from Cincinnati. Why, is more than I can comprehend.

Have written Captain Holloway to see you, and for him (C. M. H.) to wire me before Tuesday's boat passes, so that I may come in her.

Yours truly, JOHN MEANS."

Q. 183. Mr. Means, it seems that your letter to William Means of February 16, 1888, a copy of which is on page 142 of your letter

book is marked Exhibit 1 in testimony for complainants. I find no exhibit of that kind in the testimony. Will you read that letter?

A. That letter reads as follows:

(Usual letter-head.)

"FEBRUARY 16TH, 1888.

DEAR WILL.: I reached home 1 p. m. today. Hattie and Cook came last night. Have not seen father or Maggie—will see them tonight. Have been busy this afternoon making entries of my transactions, yesterday examining, sorting and listing notes and collaterals. My payments yesterday for you amounted to one hundred and twenty-five thousand nine hundred eleven $\frac{74}{100}$ ($125,911.74) dollars. I think you had better send me note at one day in father's favor for the amount.

Had a talk with E. F. Williams on my way up, and when I explained to him he agreed with me that this is best to close up the matter at present. He may write you. Will try to send you $1,000.00 tomorrow or next day. Almost train time.

Yours truly, JOHN MEANS."

Q. 184. Have you discovered any statements furnished William Means of the transactions heretofore referred to that have not been read? If so, read the ones discovered.

A. A statement of account I have here on page 298 of letter book, dated the 27th of September, 1888. It is as follows:

ASHLAND, KY., *27th September*, 1888.

William Means in account with John Means.

1888.					
April	3.	For paid to James McConville, rec'v'r Metropolitan Nat'l bank on recording mortgages on Findlay and Toledo property		$15 15	
506					
July	28.	" paid Thomas W. Means		480 00	
Aug.	31.	" " do.		160 00	
Sept.	5.	" " do.		160 00	
	7.	" " do.		350 00	
	12.	" " do.		315 85	
	14.	" " express charges on Labrot Trust bonds 6th		5 00	
1888.			CR.		
April	2.	By dividends on Dist. & Catl. Fdrs.' Trust			$336 00
July	23.	" do. " " " "			480 00
Aug.	31.	" do. " " " "			160 00
Sept.	4.	" do. " " " "			160 00
	6.	" interest of A. C. & I. R. Co. Labrot Trust			350 00
				$1,486 00	$1,486 00

(E. & O. E. objected to.)

Q. 185. Can you state in what letter or how that was forwarded to Mr. Means?

A. No, I can't tell. It was forwarded about the time it was made out.

Q. 186. I will ask you whether that statement was forwarded to William Means, and if so, how?

A. It was forwarded to him by mail.

Q. 187. At what time?

A. About the time it was made out.

Q. 188. That it bears date?

A. Yes, 27th September, 1888.

Q. 189. Have you any other statements that were furnished William Means that have not been read in evidence? If so, read them.

A. Yes, sir. The statement that appears here on pages 310 and 311 of another book was on one sheet, but the letter book was not large enough to copy it on one page. It is as follows:

William Means in account.

1888.		Dr.	
Feb.	13.	For paid John Means for L. Labrot	$700 00
	"	paid Samuel F. Hunt	1,200 00
	20.	" of John Means 18th inst	1,000 00
	24.	" Cincinnati draft sent to order of C. M. Holloway	1,000 00
April	2.	" John Means paid to C. W. Baker	1,500 00
507			
	21.	" remitted Samuel F. Hunt	1,000 00
April	28.	" remitted yourself, Cin'ti draft	1,386 36
June	16.	" " " " "	257 02
June	16.	" " " " "	123 05
"	"	" " " " "	500 00
July	13.	" " Dr. McClellan	1,450 00
"	28.	" " Samuel F. Hunt	500 00
Aug.	10.	" " Countess D'Ahemar	195 84
"	17.	" " Emil Seigneurit cost of telegram interest and exchange	1,369 17
"	30.	" paid your note dated 29 July, 1889, and interest from 1st July, 1888, to 20th inst	5,041 67
"	31.	" Countess D'Adhemar 20th inst	195 84
"	25.	" remitted George Gerke on syndicate debt	7,400 00
"	29.	" paid John Means error overcredit	80 00
		" remitted Countess D'Adhemar	391 78
			$25,290 77

Page 311 of letter book, current with Thomas W. Means.

1888.		Cr.	
Feb.	13.	By 69 shares Cincinnati and Portsmouth, Big Sandy and Pomeroy Packet Co. stock	$6,900 00
April	2.	By 200 shares Ky. Iron, Coal & Mfg. Co	5,000 00
July	18.	By Frank Huntington, check National Lafayette Bank of Cin'ti	350 00
July	28.	By John Means check for March, April and May dividends, Dist. and Cattle Fdrs.' Trust	480 00
Aug.	31.	" do. July Dist. Cattle & Fds.' Trust	160 00
Sept.	5.	" do. June " " " "	160 00
"	7.	" do. coupons 10 coupons L. & B. S. R. R., E. D. A. C. & R. R	350 00
"	12.	" balance %	315 85
	28.	" do	173 15
			$138,889 00

508 (Counsel for defendants objects to the contents of this paper for the reason that is has all been introduced previously by witnesses, and that the production of it again is simply a repetition of the same thing, designed to make more costs, and consume more time.)

Q. 266. What paper do you now hold in your hand?

A. This is the contract for the sale by the individual partners of Means, Russell & Means, by which they agreed to sell to the corporation called the Kentucky Bellefont Iron Company.

Q. 267. What is the date of it?

A. 18th July, 1884.

Q. 268. By whom is it signed?

A. Thomas W. Means, John Russell and Hugh Means.

Q. 269. By whom was the name Thomas W. Means signed?

A. Signed by himself. "John Russell" is written by himself, and "Hugh Means" wrote his name.

Mr. ANDERSON: We offer the contents of this paper in evidence, and ask that the examiner identify the same as a- original paper by placing thereon his signature and date.

The paper is marked "original paper," Ashland, Ky., May 12th, 1893. B. Perin, sp. ex.

Mr. WHITTAKER: We object to the offer.

Q. 270. Will you please read the contents of the paper itself to the examiner?

A.—

To the Kentucky Bellefont Iron Co.:

The undersigned, Thomas W. Means, John Russell and Hugh Means, a copartnership, trading and doing business under the firm name and style of Means, Russell & Means, hereby offer and propose to sell to the said "Kentucky Bellefont Iron Company," a corporation, all the real and personal estate, and the firm effects of Means, Russell & Means in the State of Kentucky, or elsewhere, as follows, namely:

I. The following tracts, boundaries and parcels of land in the counties of Boyd and Greenup, known as 1, "The Bellefont Furnace tracts;" 2, "The Amanda Furnace tract;" 3, "The Buena Vista or Princess Furnace tract;" 4, "The Clinton Furnace tract;" 5, "The Sheeler tract or place;" 6, "The Poage tract," (of John Kincaid); 7, "The J. T. Eastham tract or place;" 8, "The William Bottles tract," and 9, "The Henry McKnight house and lots," in the town of Russell, comprising as they severally do all the real estate of the said Means, Russell & Means in their partnership
509 capacity aforesaid and to convey same by deed of general warranty with the relinquishment of dower on the part of the wives of said John Russell and Hugh Means for the consideration and at price of one hundred and fifty thousand dollars ($150,000).

II. And the personal property and firm effects of said Means, Russell & Means, wherever situate, comprising the Bellefont furnace, store fixtures, all manufactured iron, raw material, live stock, and the property belonging or in any manner appertaining to the several tracts of land covered by the terms of item 1 of this proposition, it being the intent and purpose of this proposition and offer to fully transfer all and singular the firm property and effects of said Means, Russell & Means, real, personal and mixed, and for the property offered by the second item the price is fixed at the sum

of one hundred and thirty thousand ($130,000) dollars, the total offer for the two items being the sum of two hundred and eighty thousand ($280,000) dollars, both being subject to the existing liabilities of the firm. The partners named own, offer and will convey their interests in the whole as follows :

Thomas W. Means, an interest of five-eight-s (5/8); Hugh Means, an interest of two-eight-s (2/8), and John Russell, an interest of one-eight- (1/8).

The consideration price in the proportion and interests aforesaid we severally agree shall be paid to us in paid-up capital shares in the stock of the said Kentucky Bellefont Iron Company at a par valuation.

Given under our hands this 18th day of July, 1884.

(Signed) THOMAS W. MEANS.
JOHN RUSSELL.
HUGH MEANS.

Recess until 1.30.

Q. 273. Is the paper an original or copy of original? If copy by whom was it made?

A. This is a copy made by Captain Culbertson.

Q. 274. At what time was it made, and did you receive it?

A. It bears date the 19th of January, 1880. I don't know when I first saw it. I was not at home on January 19th, 1880, but my father came to see me about it on the 4th of March afterwards.

Q. 275. Did you at any time have this copy in your possession, or did he bring it to you?

A. I don't know whether I had it or whether he brought it.

510 Q. 276. I will ask you to read that paper as a part of your deposition.

A. This is marked " copy " at the time.

I propose to lease or rent to W. W. Culbertson, of Boyd county, Ky., the furnace property known as the Princess furnace, including the Eastham Clere and Mead places and other lands attached to the furnace tracts of land. This lease is to commence April 1st, 1880, and is to end April 1st, 1888, at which time said Culbertson is to give Thomas W. Means, his heirs or assigns, peaceable possession without further notice. Said Culbertson, his heirs and assigns, is to have the right to use the ore and coal on the lands for the purpose of making pig iron and may sell such coal as is found not good for using in the furnace, also to use the timber on the land, any coal bank, wagons, railroad iron, cars for hauling coal to furnace and other tools and appliances useful in running the furnace now at or about the furnace, said Culbertson is to have free of charge. The goods in store and the ore on bank is to be paid for by said Culbertson as may hereafter be agreed upon.

For and in consideration of the rights and privileges above given by said T. W. Means said Culbertson agrees to give to said Means every twelfth ton of the iron made at the furnace during each year except the year from April 1st, 1880, to April 1st, 1881. During

this year no rent is to be paid. This proposition is to hold good to April 1st, 1880, if accepted. Otherwise it is void.
Jan. 19, 1880.

THOMAS W. MEANS.

The foregoing copy is in the handwriting of W. W. Culbertson.

Question and answer objected to as irrelevant and incompetent.

Q. 277. I will ask you whether there is any endorsement on that paper or memoranda, and if so, to state what they are, and when made?

A. Here is an endorsement: "Copy of proposal, T. W. Means to W. W. Culbertson." That is in my handwriting, and I suppose was made at or about the time it was handed to me. The date, 19th January, 1880, is on the back of here, I made, I think yesterday to simply show the date of it, on a different end of the same side of the sheet are the objections I made to the signing of the lease on the terms proposed. They were made at the time. The first years, there is no rent for a year. Second, there is no agreement about the payment of taxes which would have left T. W. Means to pay the taxes. Third, the privilege of selling coal under which he
511 might have sold a good deal of coal, and there is no royalty to be paid for it. There is a memorandum about the Clere and Mede land and Eastham. I don't recollect the reason that I objected to that for. Then, he is to be given without any charge certain personal property here which might amount to several thousand dollars cash—probably would. The- is no provision for keeping up the repairs or at whose expense they are to be kept up. There is here in pencil marks, too, "J. M. 19-1-'80, 4-3-'80, T. W. M. & A. here about this."

Q. 295. I will ask you, Mr. Means, to look at the paper now handed you, state what it is, and read the same as a part of your deposition.

A.—

JUNE 1ST, 1880.

One year after date, I promise to pay to the order of W. Culbertson, guardian, six thousand five hundred and forty-five $\frac{79}{100}$ dollars, with six per cent. interest per annum at Ashland National bank. Value received.
$6,545.79.

It is endorsed across the face "Paid July 13th, 1888." On the back is the memorandum "$6,547.79 note paid 13th July, 1888, W. W. Culbertson, guardian," and a memorandum "See page 187, Journal B."

Q. 296. Now, Mr. Means, while we are on that branch of the case, I will ask you if you have any checks that were signed by Thomas W. Means, and if so, will you produce them?

A. I have a number of checks here, in 1885, 1886 and 1887.

Q. 297. How many, about, all together?

A. Somewhere between 80 and 100, I should think, without counting.

Questions and answers objected to as irrelevant and incompetent.

Q. 298. I will ask you what is the date of the check now handed you, by whom it is signed and filled up?

A. It is dated January 21st, 1885, filled up and signed by Thomas W. Means for $50.00.

Q. 299. Read the same, if you please, in full, and that the examiner identify it as an original paper.

A.—

No. —. ASHLAND, KY., *Jan.* 21, 1885.

Ashland National bank

Pay to Thomas W. Means or bearer fifty dollars in current funds.
$50.00.
(Signed) THOMAS W. MEANS.

512 You will find nearly every check is filled up by the men in the bank. He would go in and have the man fill it up and he would sign it, and take the money and go home, and pay his bills.

Objected to.

Q. 300. I will ask you to read as a part of your deposition each of the checks you now hold in your hand.

"ASHLAND, KY., *Dec.* 27, 1887.

Ashland National bank

Pay to self or bearer one hundred dollars.
$100.00. THOMAS W. MEANS."

"ASHLAND, KY., *Dec.* 13, 1887.

Ashland National bank

Pay to self or bearer fifty dollars.
$50.00. THOMAS W. MEANS."

"ASHLAND, KY., *Nov.* 29, 1887.

Ashland National bank

Pay to self or bearer twenty-five dollars.
$25.00. THOMAS W. MEANS."

"ASHLAND, KY., *Nov.* 18, 1887.

Ashland National bank

Pay to self or bearer ten dollars.
$10.00. THOMAS W. MEANS."

"ASHLAND, KY., *Nov.* 16, 1887.

Ashland National bank

Pay to self or bearer fifteen dollars.
$15.00. THOMAS W. MEANS."

"ASHLAND, KY., *Nov.* 9, 1887.

Ashland National bank

Pay to self or bearer, twelve dollars and $\frac{50}{100}$ dollars.
$12.50. THOMAS W. MEANS."

"ASHLAND, KY., *Oct.* 31, 1887.

Ashland National bank

Pay to self or bearer, ten dollars in current funds.
$10.00. THOMAS W. MEANS."

513 "ASHLAND, KY., *Oct.* 17, 1887.

Ashland National bank

Pay to R. C. Poage & Son per order, eight $\frac{3}{100}$ dollars.
$8.03. THOMAS W. MEANS."

"ASHLAND, KY., *Oct.* 11, 1887.

Ashland National bank

Pay to self or bearer, twenty dollars.
$20.00. THOMAS W. MEANS."

"ASHLAND, KY., *Sept.* 7, 1887.

Ashland National bank

Pay to W. C. Conit or order, fifty dollars, in current funds.
$50.00. THOMAS W. MEANS."

Endorsed: "W. C. Condit."

The above checks were marked as follows:
"Original. Ashland, Ky., May 12th, 1893. B. Perin, sp. ex."

(Question and answer objected to as irrelevant and incompetent.)

Q. 301. I will ask you what the paper now held by you is?
A. It is a check.
Q. 302. I will ask you to read it as a part of your deposition?
A.—

Ashland National bank

"Pay to John Russell or bearer eight hundred and twelve $\frac{72}{100}$ dollars.
$812.72. THOMAS W. MEANS,
By JOHN MEANS,
Attorney-in-fact."

(Question and answer objected to.)

Q. 337. Will you make the contents of those papers a part of your deposition as exhibits?
A. I will.

The paper marked E is Exhibit 10 and the paper marked F is Exhibit 11. Copies of Exhibits 9, 10 and 11 are as follows:

EXHIBIT 9.

Ashland, Ky., May 12, '93. B. Perin, Sp. Ex.

Items from Books of Means & Co. as Made in Memorandum by Thos. M. Adams, Credited to Thos. W. Means, and Not Entered or Charged on His Books.

514

1890, Feb'y	28.	Interest on $37,347.09 from 1 March, '69, to 1 March, '70.	$2,240.82	
		25,000.00 fr. 10 Apr. to 1 Mar. '70	1,333.33	
		8,000.00 fr. 10 Dec. to 10 Jan., '69	40.00	
		6,000.00 fr. 10 Jan. to 10 Feb.	30.00	
		4,000.00 " 10 Feb. to 1 Mar.	13.33	
				$3,657.48
March	12.	J. T. Calvin, orders		4,725.00
June	6.	Bank of Ashland p'r check H. Means		5,000.00
Sept.	9.	Furnace fr't paid Mike O'Brien		1.25
1871, March	1.	Interest on various sums		4,530.04
1875, March	1.	" " "		162.16
				$18,075.93

Above Entry of M'ch 1, 1871, *Itemized.*

Interest on 66,630.59 from Mar. 1st to Mar. 12, 1870, 6 %	133.26
Interest on 71,355.59 from Mar. 12 to June 6, 1870, 6 %	998.97
Interest on 76,355.59 from June 6 to March 1, 1870, 6 %	3,397.81
	4,530.04

(Endorsement:) Memo. of ac., copied by Thos. M. Adams, in pencil, not heretofore entered on Thos. W. Means' books. Entered under his direction the 2nd July, 1879, pages 86 and 87, day book.

EXHIBIT 9.

Ashland, Ky., May 12, '93. B. Perin, Sp. Ex.

Charges against Thos. W. Means on Means & Co.'s Books not Entered on His Books, from Memo. by Thos. M. Adams.

1870.			
Jan'y	8.	To A. J. Crawford balance due on house W. W. C.	$2,079 24
	29.	To Bank of Ashland c'k to W. W. C. for house	500 00
Feb'y	2.	To Bank of Ashland bill flooring, $115.00, fr't bill $44.71	159 71
	2.	To Bank of Ashland bill nails	27 00
	9.	" draft sent Dunn & Witt, Cincinnati	1,266 00
	10.	" lumber c'k to W. Creary	14 43
	11.	" Austin Sutten lath	200 00
	14.	" draft to Schneider	758 57
515	15.	" p'd W. W. Culbertson on building	500 00
	15.	" c'k to Julius Miller	200 00
	22.	" draft to Taylor & Faulkner	1,260 00
		" p'd Jos. Davidson fr't and charges on lumber	160 50
	28.	" c'k to Newman & Co. for lumber	148 53
		" paid Jo. Alexander	100 00
Mar.	8.	" c'k to Dunn & Witt	1,204 60
	9.	" " Wm. Sterrett, carpenter on house	137 50
	18.	" c'k Julius Miller	200 00
	22.	" fr't	48 40
	28.	" paid Julius Miller	200 00
	29.	" " Jo. Alexander	200 00
		To cash paid Hicks, stone mason	3 00
	31.	" Bank of Ashland W. W. Culbertson to pay on house	500 00
April	5.	" Veyssie & Jones bill of mdse	50 00
		" cash paid Galiqu Martender	3 75
	15.	" Bank of Ashland fr't p'd Jo. Davidson	61 00
	25.	" bank c'k Taylor & Faulkner	1,500 00
	30.	" cash cellar-door hinges	5 00
	13.	" Bank of Ashland c'k to Newman & Co	431 64
	18.	" Bank of Ashland draft W. R. Cox for glass	793 27
		" Bank of Ashland c'k Wm. Schmitt	207 00
		" Bank of Ashland c'k Jo. McGarvy	200 00
		" Bank of Ashland W. W. C. on house	500 00
		" W. W. Hackworth for hauling brick, posts, &c	22 50
	26.	" Bank of Ashland p'd Wm. Kibbey for Jo. McGarvey	56 00
		" Bank of Ashland for A. Sutton, plasterer	350 00
		" Bank of Ashland for furniture and fixtures	466 00
		" Bank of Ashland for Jos. Davidson fr't	25 30
	18.	" cash for logs for bridge	3 07
516			
June	2.	" Bank of Ashland for Ed. Courtney for brick	306 37
	11.	" Frank Kitten for 8 men's work to 2 June, 1890	200 00
		" Bank of Ashland for order Veyssie & Jones	50 00
		" Fuman for fr't p'd Jo. Davidson	3 25
		" C. C. Seffingwell for lime and cement	63 05
			$15,164 68
1870.		Account from 2nd page	$15,164 68
June	23.	To Bank of Ashland c'k to Jos. McGarvey	132 00
	1.	" Bank of Ashland fr't bills	22 10
		" " Harris & Co., lightning rods	144 50
		" Bank of Ashland, lumber of Fisher & Bro.	27 46
	13.	" cash Myer blacksmith bill $8.15, telegram $1.65	9 80
		" Bank of Ashland c'k to W. W. Culbertson	500 00
		" Bank of Ashland Hartzwell & Bro., lumber	66 60
		" Bank of Ashland cement of Leffingwell	12 00
		" Traber & Aubery for c'k for Taylor & Faulkner	1,000 00

Aug.	4.	" cash am't paid John Gosler $45, am't p'd board, gas-fitter, plumber and mantle setter $77.50, Geo. Morman $2.25	124 75
		" Bank of Ashland am't paid Jos. Davidson fr't	46 50
		" Bank of Ashland c'k to Newman & Co	194 36
	5.	" Bank of Ashland W. R. Cox & Cobal in glass $97.80, p'd Sterrit 29 July $225;	
		" Bank of Ashland John Kraus $30-$141, H. Kraus $144, W. W. C. $500	1,107 80
	12.	" W. M. Kern & Co. for hardware for W. W. C. house	300 00
517		" Bank of Ashland for Baker, fresco man	27 65
	18.	" Bank of Ashland for draft sent J. B. & S. Gibson	1,000 00
	27.	" Bank of Ashland 2 fr't Jos. Davidson	5 00
		" Bank of Ashland 2 p'd F. Kittman	20 00
	30.	" Furman 2 140¾ Mr. Herrey $22.11	22 11
		" cash 2 McBrin $15, Burns $20	35 00
		" " 2 W. W. Hackworth hauling for house	7 00
		" bill sash, Wright, Lankan & Co.	87 04
Sept.	8.	" bill of Van & Sons	125 00
	12.	" " of Veyessie & Jones (Sept. 14)	42 35
	21.	" cash paid fresco man	500 00
	30.	" " Kemptner's board	51 00
		" B. of A. fr't Jos. Davidson	9 90
Oct.	14.	" " " "	4 55
Nov.	10.	" " paid Courtney on well	111 70
	30.	" cash for varnishes $18 & $12, Burns for 4¾ ds' work $5.60.	35 60
		" B. of A. Jos. Davidson fr't	9 30
Dec.	6.	" " C. M. Wilson bill	112 20
	10.	" " p'd varnishers	63 00
	21.	" " W. R. Cox glass & paints	54 33
		" " p'd Hager Febry & Van Lewis	30 00
		" " W. W. Culbertson	540 63
		" " Newman & Co., lumber	53 07
		p'd Harris 12th $21.25, McBriar 13th $24.12, J. Greenbeck $ 18.40;	
		" " M. O'Brien $13, F. Schmit $18	94 77
	24.	" " p'd varnishers	63 00
		" " fr't p'd Jos. Davidson	2 70
		Amount forward to 4th page	$22,953 45
1870.		To account from 3rd page	$22,953 45
Dec.	24.	To cash Giles & Luders, 9 varnishers 63, trees 19	91 00
518			
1891.			
Jan.	6.	" B. of A. bill lumber, Fisher & Bro	39 94
	6.	" B. of A. Joseph Alexander	200 00
	10.	" " J. B. & S. Gibson	1,000 00
	16.	" " p'd C. Crunn D. W. 24, 14.25. Jos. Alexander for paint, 28.70. Varnishers 63	105 95
	28.	" B. of A. Davidson, fr't	18 15
		" cash p'd I. Bock	6 00
Feb.	3.	" B. of A. draft to Taylor & Faulkner	30 00
	8.	" B. of A. W. O. Ireland f'r Jos. Alexander 183.30, Jos. Alexander painting 151.68	334 98
		" cash p'd F. Schmit 9, Roberts for stone 2	11 00
	11.	" cash p'd Lamon f'r rep. front steps	5 00
		" cash p'd bal. on range	11 00
		" B. of A. p'd J. E. McClear, Minn	334 00
		" B. of A. c'k to Wm. Schmitt	145 00
	25.	" " insurance on house	200 00
Mar.	1.	" interest *for* on various sums paid S. J. C. house 641.80.	641 80
Feb.	28.	" cash for hauling rock	3 50
Mar.	28.	" bal. hardware bill Scheden	198 28
		" cash for Caldur bill	32 98
		" Veyssei & Jones for shingles & hardware M'ch 27	27 65

April	1.	" W. W. Hackworth hauling		12 00
		" B. of A. Davidson fr't & wharfage		4 25
		" B. of A. S. care boat hauling		30 50
	13.	" " p'd C. Cramer		6 37
	18.	" " " Julius Miller		187 84
May	5.	" " " Geo. Dana for		29 50
		" " " King fir trees 143, F. Ketton 31		174 00
	19.	" B. of A. bal. J. B. S. Gibsen's bill		646 71
June	10.	" W. N. Lanham 1 iron plate for well, 603 %	24.37	
		sashes weight, 120 3½	4.20	
		480 3½	16.80	
				45 37
519				
July	10.	" F. Kettun f'r board 1895. Cat milk 18 Mayer for 13 men to 2nd inst		538 00
		" B. of A. p'd Row		30 62
		" " draft J. B. Schroder		18 5[illegible]
Aug.	9.	" " oil and varnish		10 75
		" " frescoing		73 47
		Amount to 5th page		$28,197 61

(5th page.)

Memo. from Means, the books by Thomas M. Adams for entries in Thos. Means' %.

1871.		To amount from 4th page	$28,197 61
Aug.	14.	" B. of A. for bal p'd fresco painter	149 51
			$28,347 12

Total amount of charge on Means & Co.'s books against T. W. Means for which they have no credit on T. W. Means' books	28,342 12
Amount of charge on Means & Co.'s books which correspond with credits on T. W. Means' books	71,388 22
Total amount of charge on Means & Co.'s books	99,735 34
Total amount of items credited to T. W. Means on Means & Co.'s for which they are not charged on T. W. Means' books. (See page 1 memorandum.)	18,075 93
Amount of credits on Means & Co.'s books which correspond with charges on T. W. Means' books	90,852 32
Total amount of credits on Means & Co.'s books	108,928 25
Balance in favor of T. W. Means	9,192 91
Erroneous charge against T. W. Means on Means & Co.'s books, which remains to be corrected	30 75
Balance as now shown by Means & Co.'s books	9,162 16

520 The entries on the credit side of T. W. Means' books, July 30, 1870, for $8,000, and March 18, 1893, for $2,219.85 were not found on Means & Co.'s books, and will have to be credited to some other account before the book will balance.

The debit item on T. W. M.'s books $3,534.98 should be $3,534.94, as you will see in adding up the items.

EXHIBIT 10.

Ashland, Ky., May 12, 1893. B. Perin, Sp. Ex.

(E.)

Acpt. Current, T. W. Means with Means & Co.

1875.				
Mar.	1.	By balance		9,162 16
1876.				
Mar.	1.	" int. on above 1 yr. 6 %		549 73
	1.	" balance to date		$9,711 89

(Endorsed:) % Means & Co. Culbertson*n*, Means & Culbertson. 1 March, 1876.

EXHIBIT 11.

(F.)

Ashland, Ky., May 12, 1893. B. Perin, Sp. Ex.

Acpt. Current, T. W. Means with Culbertson, Means & Co.

1876.				
Mar.	1.	By balance		9,711 89
	10.	" checks		1,500 00
Nov.	15.	" "		200 00
	15.	" "		1,000 00
Dec.	4.	" "		2,500 00
	6.	" "		4,500 00
1877.				
Feb.	1.	" "		3,965 00
	5.	" "		2,000 00
April	1.	" "		6,800 00
	10.	" "		200 00
	27.	" "		1,000 00
May	10.	" "		1,250 00
June	1.	" Lambert & Gordan		3,000 00
July	1.	" checks		1,000 00
	20.	" "		1,500 00
	20.	" Means, Russell & M		5,000 00
1878.				
Mar.	13.	" checks		800 00
April	1.	" "		500 00
	20.	" "		3,400 00
521				
May	10.	" "		800 00
	20.	" "		850 00
June	30.	By int. $1,500, Nov. 10, '76, to July 1, '78, 1 yr., 7 mo., 22 ds.		148 00
		" " $200, Nov. 15, '76, to July 1, '78, 1 yr., 7 mo., 17 ds.		19 56
		" " $100, Nov. 15, '76, to July 1, '78, 1 yr., 7 mo., 17 ds.		97 83
		" " $2,500, Dec. 4, '76, to July 1, '78, 1 yr., 7 mo., 28 ds.		236 66
		" " $4,500, Dec. 6, '77, to July 1, '78, 1 yr., 6 mo., 26 ds.		424 50
		" " $3,965, Feb. 1, '77, to July 1, '78, 1 yr., 5 mo.		337 02
		" " $2,000, Feb. 5, '77, to July 1, '78, 1 yr., 4 mo., 25 ds.		168 33
		" " $6,800, Apr. 1, '77, to July 1, '78, 1 yr., 3 mo., 1 day.		511 13
		" " $200, April 10, '77, to July 1, '78, 1 yr., 2 mo., 21 ds.		14 70
		" " $1,000, April 27, '77, to July 1, '78, 1 yr., 2 mo., 4 ds.		70 66
		" " $1,250, May 10, '77, to July 1, '78, 1 yr., 1 mo., 21 ds.		85 62
		" " $3,000, June 1, '77, to July 1, '78, 1 yr., 1 mo.		195 00
		" " $1,000, July 1, '77, to July 1, '78, 1 yr.		60 00
		" " $1,500, July 20, '77, to July 1, '78, 11 mo., 10 ds.		85 00

	"	"	$5,000, July 20, '77, to July 1, '78, 11 mo., 10 ds....	283 33
	"	"	$800, Mar. 13, '78, to July 1, '78, 3 mo., 19 ds.....	14 53
	"	"	$500, Apr. 1, '78, to July 1, '78, 3 mo.....	7 50
	"	"	$3,400, Apr. 20, '78, to July 1, '78, 2 mo., 11 ds.....	40 23
522	"	"	$800, May 10, '78, to July 1, '78, 1 mo., 21 ds.....	6 80
	"	"	$850, May 20, '78, to July 1, '78, 1 mo., 11 ds.....	5 80
1878.	"	"	$9,711.89, bal. Mar. 1, '76, 2 yr., 4 mo., 2 ds.....	1,362 88
July	1.	"	balance in full.....	$55,651 97

Q. 445. Will you have the examiner mark them Exhibits Nos. 12, 13, 14, 15, 16, 17 and 18, both inclusive, and make the contents of same respectively part of your deposition?

(Questions and answers so far as they relate to balance-sheets, drawn by witness from his father's books for the years specified in the questions, objected to as irrelevant and incompetent, because the books themselves are evidence, and show all the facts that the balances could possibly show.)

A. Copy of said balances is as follows:

523 *Thomas W. Means—Balances, 1882, Aug. 19*

Page.	Dr.	
81	Steamboat stock	$16,000 00
89	Ky. I. C. & M. Co. stock	21,500 00
95	Ashland N. bank	39,300 00
161	Bellefont stock	150,000 00
204	L. Miami R. R. stock	2,050 00
246	M., K. & Co.	200,000 00
272	Ports. gas.	3,500 00
284	M. & C. R. R.	4,841 00
284	" " bonds	200 00
306	Norton I. W. stock	3,000 00
246	Sec. N. Bank stock	25,400 00
204	Cal. bonds	50,000 00
334	Bills rec.	81,398 39
272	Ashland realty	9,500 00
273	Hamilton farm	35,643 90
290	H. Rock lots	1,314 00
338	Beatty farm	3,517 34
338	Ports. realty	3,880 00
309	Sec. Nat. bank	545 63
329	Means, Kyle & Co.	172 67
333	C. M. & Culbertson	169,067 31
340	Interest	31 08
352	Furnace stove	64 81
382	524 John	96,000 00
321	Mary	99,845 45
320	Margaret	77,400 00
280	Jane	29,609 82
220	William	95,300 00
		1,219,081 40

Page.	Cr.	
299	Bills payable	$6,695 99
96	Means, Russell & Means	168 72
138	James Means	6,534 00
336	T. W. Adams	302 81
344	A. N. bank	263 87
348	Princess furnace	2,007 76
1	Cap. stock	1,203,108 45
		1,219,081 40

525 *T. W. Means—Balances, Aug.* 19, 1882.

List of stocks.	Shares.	
Sec. N. bank, Ironton:		
No. 122	12	
111	6	
11	50	
213	81	
127	13	
310	60	
307	6	
306	10	
305	6	
297	10	
	254	$25,400 00
Ports. Gas-light Co.:		
No. 382	39 sh's.	$1,950 00
No. —	31	1,550 00
	70	$3,500 00
Cin'ti, Ports. & Big Sandy & P. Packet Co.:		
No. 3	158	
No. 101	2	
	160—16 M.	
Ashland N. Bank:		
No. 1	300	
113	40	
81	53	
	393	$39,300 00
L. M. R. R.:		
No. 9536	41	2,050 00
Ky. I., C. & M. Co.:		
No. 68	430	21,500 00
Means, Kyle & Co.:		
No. 42	200 sh's.	21,500 00

Thos. W. Means—Balance, 17th January, 1883.

Page.	Dr.	
81	Steamboat stock	$16,000 00
89	Ky. L., C. & M. Co.	21,500 00
95	Ashland N. bank	39,300 00
246	Sec. Nat. bank	25,400 00
161	Bellefont Furnace stock	150,000 00
204	L. Miami R. R. "	2,050 00
246	Means, Kyle & Co. "	200,000 00
272	Ports. Gas "	3,500 00
284	M. & C. R. R. "	5,041 00
306	Norton works "	3,000 00
	Bills receivable	81,098 39
	U. S. bonds	50,000 00
204	California bonds	50,000 00
272	Ashland realty (R)	9,500 00
273	Hamilton farm	35,643 90
290	Hanging Rock lots	1,314 00
338	Portsmouth realty	3,880 00
338	Beatty farm	3,517 34
309	Sec. Nat. bank, (A)	1,427 16
329	Means, Kyle & Co., No. 1	483 93
345	Ashland Nat. bank, (A)	5,554 05
333	Culbertson, Means and Culbertson, (bad).	169,067 31
352	527 Furnace store	64 81
380	John Means	95,990 25
321	Mary A. Adams	99,845 45
320	Margaret A. Means	77,400 00
280	Jane Culbertson	29,609 82
220	William Means	95,300 00
		$1,275,487 41

Page.	Cr.	
96	Means, Russell and Means	$168 72
138	James Means, (2)	6,534 00
279	Bills payable, (A)	6,695 79
336	Thomas M. Adams, (3)	302 81
		13,701 32
348	Princess furnace	2,007 76
1	Capital stock	1,259,778 33
		1,275,487 41

Reckoning for list for assessors for taxation of Jan. 10, 1883.

State, county and city:	
Bills receivable	81,098 39
1 account and banks	7,465 14
	88,563 53
Bills payable and 3 accounts	13,701 32
Value under equalization law	$74,862 21
6 town lots (see over)	7,000 00

Thos. W. Means, list for assessor, Jan., 1883. Six town lots, Nos. 1, 2, 3, 7, 8, 9, range 6 west, $7,000.00. Thos. W. Means, balance 17th Jan., 1883, and list of assessors, 10th Jan., 1883. Ex. 13.

Page.		Dr.	
81		Steamboat stock	$16,000 00
89		Ky. I., C. & M. Co. stock	21,500 00
95		Ashland Nat. Bank "	39,300 00
246		Second Ironton "	25,400 00
161		Bellefont Furnace "	150,000 00
204		Little Miami R. R. "	2,050 00
246		Means, Kyle & Co. "	200,000 00
272		Portsmouth Gas "	3,500 00
284		M. & C. R. R. bonds & "	5,041 00
306		Norton Iron Works "	3,000 00
204		California bonds	50,000 00
257		U. S. 3 %	50,000 00
272		Ashland realty	9,500 00
273		Hamilton farm	35,643 90
290		Hanging Rock lots	1,314 00
338		Portsmouth "	3,880 00
"		Beatty farm	3,517 34
334		Bills receivable	93,148 39
309		Second Nat. bank	414 60
345		Ashland Nat. bank	1,261 97
353		Means, Kyle & Co.	284 04
333		Culbertson, Means & Culbertson	169,067 31
280		Jane Culbertson	29,609 82
220	529	William Means	95,300 00
320		Margaret A. Means	77,951 01
321		Mary A. Adams	99,845 45
380		John Means	96,000 00
			$1,282,528 83

Page.	Cr.	
96	Means, Russell & Means	168 72
336	Thos. M. Adams	302 81
279	Bills payable	6,545 79
	Capital stock	1,275,511 51
		$1,282,528 83

	Dr.	Cr.
Reckoning for list for assessors, 10th Jan'y, 1884, State, county, and city of Ashland.		
Bills receivable	93,148 39	
1 ac. and banks	1,960 61	
	$95,109 00	
Less bills payable and 2 acs	7,017 32	
Value under equalization	88,091 68	
See over.		
List for assessors, State, county, and city of Ashland, 10th of Jan'y, 1884.		
6 town lots Nos. 1, 2, 3, 7, 8, 9, range 6, west	$7,000 00	
Under equalization law	88,091 68	
Total value	$95,091 68	

Thomas W. Means, balance 18th of Jan'y, 1884, and list for assessors or of date 10th of Jan'y, 1884, Ex. 14.

530 *Thomas W. Means—Ledger Balance.*

Page.	Dr.		Page.	Cr.	
51	John Russell	$6,000 00	95	Means, Russell & Means	168 72
309	Second N. bank	414 60	335	Thos. M. Adams	302 81
345	Ashland N. bank	3,929 36	358	Means, Kyle & Co.	364 37
81	Steamboat stock	19,700 00		Bills payable	6,545 79
89	Ky. I. C. & M. Co.	21,500 00		Capital stock	1,275,511 51
95	Ashland Nat. bank	39,300 00			
246	Second Nat'l bank	25,400 00			
161	Bellefont Iron Co.	150,000 00			
204	Little Miami R. R.	2,050 00			
246	Means, Kyle & Co.	200,000 00			
273	Portsmouth car	3,500 00			

284		M. & C. R. R bonds & stock	5,041 00	
307		Norton I. works	3,000 00	
339		A. C. & I. R. R. Co	15,000 00	
204		Bonds, California reclamation	50,000 00	
250		Bonds, Lowmoor & Co., B	3,000 00	
259		Bonds, U. S.	50,000 00	
334		Bills receivable	64,148 39	
272		Ashland real estate	9,500 00	
273		Hamilton farm	35,643 90	
290		Hanging Rock lots	1,314 00	
338		Beatty farm	3,517 34	
338		Portsmouth real estate	3,880 00	
333	531	Culbertson, Means & Culbertson	169,067 31	
380		John Means	100,000 00	
381		Wm. Means	100,000 00	
280		S. J. Culbertson	29,609 82	
321		Mary A. Adams	100,000 00	
320		Margaret A. Means	100,000 00	
			1,319,906 40	1,319,906 40

532 *Reckoning for Tax-list for Assessor*—1885, *Jan. 10th.*

Bills receivable	64,148 39	List of bills receivable.	
Lowmoor bonds	3,000 00		
Bank account	10,343 96	Herman Berlkey, 1866, Nov. 22 (bad)	25 00
	77,492 35	E. S. Fletcher, 1859, Aug. 18 (bad)	1,500 00
Less 3 % and bills payable	7,381 69	Do. " " (bad)	155 00
	70,110 66	Perry Township bonds (bal.)	48 02
Value under equalization	7,000 00	A. C. & K. F. Prichard, bal.	100 00
6 town lots, range 6 west, Nos. 1, 2, 3, 7, 8, 9	400 00	G. W. Sample & Sons, '67, June 11 (bad)	1,000 00
2 carriages		John D. Ross, bal.	229 82
		Peter Arnfelt	667 00
		R. Matten	593 55
		J. W. Winn, bal.	850 00
		W. W. Culbertson	5,000 00
		Thos. A. Mack (30 M)	30,000 00
		Do.	5,000 00
		A. C. & I. R. Co.	10,000 00

		Dr.		Cr.	
				Do.	10,000 00
				Do.	4,000 00
					64,148 39

1885, Jan. 10.—Trial balance and list for assessor tax. Thomas W. Means, Ex. 15.

533 1886, *Jan. 23rd—Balance, Thomas W. Means' Books.*

Page.	Dr.		Page.	Cr.		
51	John Russell, due 13 Nov., 1887	6,000 00	96	Means, Russell & Means		168 72
309	Second N. bank, Ironton	525 10		Bills payable		6,545 79
346	Ashland N. bank	4,835 17	336	Thos. W. Adams		302 81
358	Means, Kyle & Co., $11,411.16	50 89				7,017 32
81	Steamboat stock	19,700 00	314	Rents	639 66	
89	Ky. I. C. & M. Co.	21,500 00	341	Interest	3,540 18	
95	Ashland N. bank	39,300 00	356	Dividends	2,667 00	
246	Second N. B., Ironton	25,400 00			6,846 84	
161	Bellefont Iron Co., "	150,000 00				
204	Little Miami R. R., "	2,050 00		Capital stock		1,308,103 42
339	A. C. & I. R. Co. "	15,000 00				
246	Means, Kyle & Co.	200,000 00				
273	Portsmouth Gas Co.	3,500 00				
284	M. & C. R. R. bonds and stock	5,041 00				
307	Norton I. W.	3,000 00				
339	Bath Av. Gas Co.	385 00				
204	Bonds California reclamation	50,000 00				
250	Bonds Lowmoor Iron Co	3,000 00				
257	Bonds U. S. 3 %	50,000 00				
334	Bills receivable	64,203 55				
272	Ashland realty	9,115 00				
273	Hamilton farm	35,643 90				
290	534 Hanging Rock lots	1,314 00				
338	Beatty farm	3,500 00				
338	Portsmouth realty	3,380 00				
333	Culbertson, Means & Culbertson	169,067 31				
327	Taxes	2,626 11				
312	Expenses	2,018 48				
324	Profit and loss	1,232 36				

280	S. J. Culbertson	26,609 82	
320	Margaret A. Means	100,000 00	
321	Mary A. Adams	100,000 00	
380	John Means	100,000 00	
381	William Means	100,000 00	
		1,315,120 74	1,315,120 74

535 1886—*Reckoning for Tax-list for Assessors—List of Bills Receivable.*

Bonds, Lowmoor I. Co.	$3,000 00	A. C. & I. R. Co., 5 notes, $5 M as collateral	25,000 00
Banks and accounts	11,411 16	Thos. A. Mack	30,000 00
Bills receivable, good	56,523 55	J. W. Winn, balance	850 00
	70,934 71	R. Matten	573 55
Deduct %s and bills payable	7,017 32	A. C. Pritchard, balance	100 00
Value under equalization law	63,917 39	W. W. Culbertson	5,000 00
6 town lots, Nos. 1, 2, 3, 7, 8, 9, range 6 west	7,000 00	G. W. Sample & Sons, bal.	1,000 00
2 carriages	400 00	H. Berkley, bad	25 00
		E. S. Fletcher, bad	1,500 00
		Do. bad	155 00
			$64.203 55

1886, Jan'y 23rd.—Balance-sheet and list for assessor. Thos. W. Means, Ex. 16.

536 1887, *Jan'y 31st—Balance, Thomas W. Means' Ledger.*

Page.	Dr.		Page.	Cr.	
51	John Russell, due	6,000 00	96	Means, Russell & Means	168 72
360	Sec. Nat. bank	865 60	279	Bills payable	6,545 79
346	Ashland N. bank	8,114 39	1	Capital stock	1,308,103 42
368	Means, Kyle & Co.	602 07	314	Rents	1,337 05
81	Steamboat stock	19,700 00	341	Interest	8,130 00
95	Ashland N. bank	39,300 00	356	Dividends	7,359 50
246	Sec. N. bank	28,900 00	325	Profit and loss	22,670 00
89	Ky. I. C. & M. Co.	21,500 00			
161	Bellefont Iron Co.	175,000 00			
246	Means, Kyle & Co.	200,000 00			
307	Norton I. W.	3,000 00			

		Dr.	Cr.
339	A. C. & I. R. Co.	15,000 00	
362	Low Moor I. Co.	15,000 00	
204	Little Miami R. Co.	2,050 00	
284	M. & C. R. R. Co. bonds and stock	5,041 00	
272	Portsmouth Gas Co.	3,500 00	
339	Bath Av. Gas	412 50	
204	California R. E. bonds	50,000 00	
250	Low Moor "	3,000 00	
259	U. S. "	50,000 00	
334	Bills receivable	51,598 55	
333	537 Culbertson, Means & Culbertson	169,067 31	
272	Ashland realty	9,115 00	
273	Hamilton farm	35,643 90	
290	Hanging Rock lots	1,314 00	
338	Beatty Farm "	3,500 00	
338	Portsmouth "	3,380 00	
280	Jane Culbertson	29,609 82	
320	Margaret A. Means	100,000 00	
321	Mary A. Adams	100,000 00	
380	John Means	100,000 00	
381	Wm. Means	100,000 00	
313	Expenses	2,237 04	
327	Taxes	1,863 40	
		$1,354,314 48	$1,354,315 48

538 *Reckoning for Assessor.*

1887, Jan'y 10.

Ashland N. bank	$8,114 39	
Second Ashland N. bank	865 50	
Means, Kyle & Co	602 07	
		$9,581 96
Bills receivable	51,598 55	
	5,000 00	
		46,598 55
Low Moor bonds		3,000 00
		59,180 51
Deduct ac. and bills payable		6,714 51
Under equalization		52,466 00
6 town lots, 1, 2, 3, 7, 8, 9, R. 6, west		7,000 00
2 carriages		400 00
Piano-forte		100 00
Watches and clocks		125 00
Silverware		100 00
Cattle, 3 cows, $100.00, $50.00, $50.00		200 00
Furniture		400 00
		$60,641 00

1887, Jan'y 31st.—Balance-sheet, list for assessor. Thomas W. Means. Ex. 17.

Balance, 9th Jan'y, 1888—Thomas W. Means.

Page.	Dr.	
359	Means, Kyle & Co.	892 56
347	Ashland N. bank	1,583 84
349	A. C. & I. R. Co	533 81
81	Steamboat "stock"	19,700 00
89	Ky. I. C. & M. Co. stock	21,500 00
95	Ashland N. bank stock	39,300 00
246	Second N. bank, Ironton	28,900 00
161	Means, Russell Iron Co	175,000 00
307	Norton iron works	3,000 00
339	A. C. & I. R. Co.	35,600 00
246	Means, Kyle & Co	200,000 00
362	Lowmoor Iron Co	15,000 00
204	Little Miami R. R.	2,050 00
284	M. & C. R. R. bonds & stocks	5,041 00
272	Portsmouth gas & do	3,500 00
339	Bath Ave. gas stock	412 50
204	California reclam. bonds	50,000 00
257	U. S. 4's bonds	55,000 00
362	Eureka bonds	25,000 00
363	R. R. (A. C. & I. R.)	4,000 00
334	Bills receivable	69,873 55
272	Ashland realty	9,115 00
273	540 Hamilton Farm realty	35,643 90
290	Hanging Rock Lots realty	1,314 00
338	Beatty Farm realty	3,500 00
338	Portsmouth realty	3,380 00
250	Lowmoor bonds	3,000 00
333	Culbertson, Means & Culbertson, 1881	169,067 31
280	Mrs. Jane Culbertson	29,609 82
320	Margaret A. Means	100,000 00
321	Mary A. Adams	100,000 00
380	John Means	100,000 00
381	Wm. Means	100,000 00
		1,410,517 29

Page.	Cr.		
1	Stock		1,403,802 78
96	Means, Russell & Means		168 72
279	Bills payable		6,545 79
			1,410,517 29
314	Rents	1,068 17	
341	Interest	4,015 46	
356	Dividends	65,600 00	
		70,683 53	

Dividends since Jan'y 31,'87.

Means, Kyle & Co., 11 %	22,000 00
A. C. & I. R. Co., 2 %	300 00
Lowmoor, I. C., 10 %	1,500 00
Norton I. C., 5 %	150 00
Means & Russell I. Co., 20%	35,000 00
Second Nat. bank, 3 %	867 00
Ashland Nat. bank, 3 %	1,179 00
Portsmouth Gas Co., 2 %	70 00
Big Sandy Packet Co., 20 %	3,940 00
Ky. I. C. & M. Co., 2 %	430 00
L. Miami R. R., 8 %	164 00
	65,600 00

313	Expenses	2,586 92
325	Profit and loss	6,149 07
327	Taxes	1,644 39
		10,380 38

541

Office copy.

Thomas W. Means—1888, *January 9th.*

Assets.

197 shares	Big Sandy Pkt. Co. at par	$19,700 00
430 "	Ky. I. & M. Co. at 60	12,900 00
393 "	Ashland N. bank at 120	47,160 00
289 "	Second Ironton at par	28,900 00
175 "	Means & Russell I. Co	175,000 00
200 "	Means, Kyle & Co	200,000 00
3 "	Norton I. W. at 70	2,100 00
712 "	A., C. & I. R. Co., 80	38,480 00
150 "	Lowmoor I. Co., par	15,000 00
41 "	L. M. R. R. Co., 160	3,280 00
70 "	Portsmouth Gas Co., par	3,500 00
55 "	Bath Ave. Gas Co., paid	412 50
3 bonds	Lowmoor I. Co., par	3,000 00
25 "	Eureka Co., par	25,000 00
4 "	A. C. & I. R. Co., par	4,000 00
Bills receivable worth		64,873 55
U. S. bonds at 124		68,200 00
Realty, Ashland		9,000 00
Hamilton farm		35,000 00
Hanging Rock lots		1,300 00
	Beatty farm	3,500 00
542	Portsmouth	3,380 00
	3 acc'ts, Nos. in red	3,010 21
M. & C. R. R. bonds and stock } California bonds }	For lot	5,000 00
		$761,696 26

Liable for city tax 10th Jan., 1888.

6 lots Nos. 1, 2, 3, 7, 8, 9, R. C. west		$7,000 00
3 acc'ts, Nos. in red	$3,010 21	
Bills receivable	64,873 55	
Bonds	32,000 00	
Amount	99,883 76	
Debts, acc'ts, and bills payable.		
Amount	6,714 51	
		93,169 25
(List.)		
1 carriage	250 00	
1 piano	100 00	
Watches and clocks	125 00	
Silverware	100 00	
Cows, $150–$50	100 00	
Furniture	400 00	
		1,075 00
		101,244 25
Deduct $500, bills due		5,000 00
Total		$96,244 25

Thos. W. Means. Balance and tax-list, 10th Jan'y, 1888. Ex. 18.

543 Counsel for defendants offers in evidence, as Exhibit 19, the contents of the letter signed Evan F. Williams, copy of which is as follows:

Evan F. Williams, lawyer, corner Second and Center streets.

IRONTON, O., *Oct. 18th*, 1890.

MY DEAR MR. HAGER: William Means came to my office feeling much hurt and worried—he states that he has overpaid the estate some two thousand (2,000) dollars, and that the executors have neglected to collect certain dividends belonging to him amounting to $800 or $1,200. He wanted a small amount to pay for the necessaries of life at Yellow Springs. Mr. Baker and myself have advised him to pay certain bills until action is taken against him for alimony so that opposing counsel cannot claim an utter abandonment of his family. Of course he is not the object aimed at in this litigation which will finally result in a direct attack on the estate. Not being able to obtain the money in Ashland he came to me, and it is at his service. Mr. Means is too proud to ask anything that don't belong to him and notwithstanding all our efforts in his behalf, I doubt if he could be induced to accept anything else.

Therefore if he has claims on the estate I do not think they should be ignored—and I have no doubt he is fully aware of his rights in that connection.

Baker writes me today that Glidden wants him to agree to let everything remain *statu quo*, which he cannot do—and that he fears attachment forthwith. If John Means, Mr. Adams and Miss Means have not signed receipts and the amount properly credited as payments, don't you think this should be attended to without delay—otherwise all our work may come to naught.

Most truly yours, EVAN F. WILLIAMS.

Q. 478. Please look at the paper now handed you and state what it is, and whether the paper is in your handwriting.

A. This is a bond to Thomas M. Adams and E. C. Means, administrators with the will annexed, to indemnify them against paying for William Means to me more than he might be entitled to in the distribution of the estate.

Q. 479. What date does it purport to bear?

A. October, '90, signed by myself and Margaret A. Means.

544 Last question and answer objected to as irrelevant and incompetent.

Q. 480. I will ask you what the paper now handed you is, and by whom it is signed.

A. This purports to be an agreement between John Means, Margaret A. Means and Mary Ann Adams, dated 18th October, 1890, signed by John Means and Margaret A. Means.

Q. 481. Where were you when you signed these papers?

A. I was in Philadelphia.

Q. 482. Are these the only papers you ever signed of that purport?

A. I think those are the only papers that I have ever signed of that kind.

Question and answer objected to as incompetent.

Mr. ANDERSON: We will offer these papers in evidence to be marked respectively Exhibits 20 and 21.

Objected to as irrelevant and incompetent.

Copy of said exhibits is as follows:

EXHIBIT 20.

Ashland, Ky., May 17, 1893. B. Perin, Sp. Ex.

We undertake and are bound to Thomas M. Adams and E. C. Means, administrators with will annexed of Thomas W. Means, deceased, that William Means, who on the 18th day of October, 1890, received from them the sum of twenty-six thousand, two hundred and forty and $\frac{79}{100}$ ($26,240.79) dollars, as legatee of Thomas W. Means, deceased, in addition to the sum of one hundred and thirty-six thousand, thirty-five and $\frac{75}{100}$ dollars theretofore paid by them to him upon same account, will refund and pay unto said Thomas M. Adams and E. C. Means, administrators aforesaid, or their successors in said trust the amount, if any, such additional payment of twenty-six thousand, two hundred and forty and $\frac{79}{100}$ ($26,240.79) dollars shall hereafter, and upon settlement of the estate of said Thomas W. Means, appear to have been in excess of the amount and value of the interest of said William Means therein as legatee or distributee.

Given under our hands this 18th day of October, 1890.

JOHN MEANS.
MARGARET A. MEANS.

545 EXHIBIT 21.

Ashland, Ky., May 17, 1893. B. Perin, Sp. Ex.

Whereas, the undersigned, John Means, Margaret A. Means and Mary A. Adams, have executed bond to Thomas M. Adams and E. C. Means, administrators, with will annexed of Thomas W. Means, deceased, as sureties of William Means for $26,240.79.

It is now mutually agreed as follows:

That should we be called upon hereafter to refund said sum or part thereof, according to the terms of such bond, that for such sum as shall be paid in gross, as between ourselves shall be accounted for on the basis of proportion the following sums bear to said sum of $26,240.79 in the bond mentioned, that is to say:

John Means	$8,478 33
Margaret A. Means	16,112 46
Mary A. Adams	1,650 00
	$26,240 79

JOHN MEANS.
MARGARET A. MEANS.

October 18th, 1890.

Q. 483. I will ask you what this paper now handed you is?

A. This is a note of Thomas W. Means in favor of Margaret A. Means for $45,000, dated 3rd day of December, 1888, and payable one day after date.

Q. 484. Will you read the same, with the endorsements thereon, as a part of your evidence in this case?

A.—

ASHLAND, KY., *3rd December*, 1888.

One day after date I promise to pay to the order of Margaret A. Means forty-five thousand dollars with interest for value received.

$45,000.00. THOMAS W. MEANS,
By JOHN MEANS,
Attorney-in-fact.

Cancelled on the face with the word "paid" across the names, and the word "paid" crossed. On the back it is endorsed "1890, February 28th, Margaret A. Means." The name written by herself. Memorandum at the top, "$45,000 note in favor of Margaret A. Means, paid 1890, February 28th."

Q. 485. For what was this note given?

A. William Means executed his note to Thomas W. Means for a like amount, dated about the 22nd of November—I cannot give the date exactly, but to bear interest after 1st December, 1888—for what he said would be the indebtedness to the Labrot estate, and this
546 note was made to my sister and she to pay that amount for him—for William Means.

Q. 486. In one of the letters of William Means to you that is in evidence, he acknowledges the receipt of $500, I think paid by you to Mr. Hunt for him, and heretofore you have answered that you thought there was a letter of his requesting you to make the payment. What is the fact about there being such a request in the letter?

A. I thought there was a request in the letter. It was found afterwards in my letter to him that it was money needed by Mr. Hunt to pay some accounts and some interest on some debts of William's and the letter that I thought was asking is the letter in which he acknowledged the statement of the account and remitted back the note for the amount.

X Q. 624. Mr. Means, you have testified, I believe, that William Means turned over to you in person and through McConville something over $180,000 or $200,000 worth of securities. Did you have them, or the most of them in your possession on the evening of the 15th, the time you had the conversation on the boat with E. F. Williams?

A. I had the most of them. There was probably about $60,000.00 that I did not have.

X Q. 625. How soon after that did you get the other?

A. I think I got the others on the 18th. This was on Wednesday, and I think I got—I think it was $53,000.00 and there was two receipts that did not amount to much; there was between $55,000 and $60,000—on Saturday.

X Q. 626. Did you not, at that time believe, that the securities of William Means would pay the $125,000.00 which you had paid to the bank?

A. I did not know. There were some of the securities stocks in companies that I have never heard of. I did not know what they were worth, and I had no means of knowing for want of information. I had reason to suppose that they might pay most or all from the fact that the securities that I knew he had put down at about their value.

X Q. 627. At that time that you paid the $125,000, you had every reason to believe that that would pay nearly, if not quite, all William Means' indebtedness, did you not?

A. I thought it would pay all we had paid for in them, and that was the only indebtedness except what he had at the bank here.

X Q. 628. You paid it with the belief that it would pay him out of debt or nearly so.

547 A. I believed that it would.

X Q. 629. You took these securities to secure you against the money you were paying out for him, did you not?

A. They were in the hands of the bank, and I took them to secure me for a note to secure myself.

X Q. 630. Why, then, Mr. Means, believing that that was merely all his indebtedness at that time, and that those securities were sufficient from your knowledge of them, if not entirely sufficient to pay that debt, were nearly so, why did you ask William Means to execute a note to your father for $125,911.74?

A. I asked him to execute a note because my father had paid $125,911.74 for him; just as if he had loaned that money to him or to any one else on collateral security. He would have taken a note and recited in the note usually as a part of it, the collaterals that are held, and the authority to sell them. I took that note as a settlement.

X Q. 631. Is it not a fact that you, before the execution of this note, had sold or credited, or disposed of a large sum of the securities in part payment of this $125,000.00 note?

A. How is that?

X Q. 632. Is it not true that before the execution of this note of William Means to your father, that you had converted a large amount of these securities which William had turned over to you, by turning them over to your father or by sale or otherwise, and paid off a large amount of this $125,000.00 note?

A. I had turned over to my father, and the books and the statements show, I think it is $28,800.00 and they were credited before I received the note. I wrote to William Means the next day after I got home and sent him the note. It was one of the first things I did, to write that letter as soon as I got through making a memorandum and list to find out what I did have. His memorandum did not give a true statement of what was in the bank. He put down 220 shares of Metropolitan National Bank stock that were not there, and then there was in the bank, which he did not have in his list, 63 shares of the packet company and 30 shares of the Mount

Auburn R. R. Co., and 9 of the Northern iron works. He made his memorandum from memory, and he put in the bank more than he had, and these other things he did not get in.

X Q. 633. Have you copied any letters in your letter book,
548 which you wrote to Mrs. William Means between the 15th of February, 1888 and 1890.

A. I think I have.

X Q. 648. When was the Labrot Trust paid, as near as you recollect?

A. I think it was in August of 1890. That is in the testimony for complainants. Mr. Maxwell handed in a statement which showed that there was paid on August 23rd, 1890, $70,000.00, and August 25th, 1891, $2,014.78.

X Q. 649. Then, there was no consideration passed between William Means and your father for the consideration of that note on the 22nd of November, 1888, was there?

A. The note bears date the 22nd of November, 1888, received here a few days after, and when I entered on my father's accounts that note, he gave at the same time his note to my sister who had agreed to assume the payment of the debt.

X Q. 650. Perhaps I have not made myself understood in my question. I again ask you if there was any consideration passed from your father to William Means upon the execution of the $45,000.00 note on the 22nd of November, 1888?

A. Well, I considered my father's promise to pay to my sister a good consideration on that note, and her promise to pay—the reason I took it in that way.

X Q. 651. I am not asking you Mr. Means about your sister's note, I am asking you about the note from William Means to your father, and whether or not there was any consideration passed to William Means from Thomas W. Means on the execution of that note?

A. The two things were simultaneous, the execution of my father's note to my sister and the entering of the note—the acceptance for him by my father—made at once and the same time, and were one and the same transaction and I considered it a consideration. Father's note he was able to pay $45,000.00 and so was my sister.

X Q. 652. Mr. Means, you understand my question, don't you?

A. I don't know. It looks to me as though you were trying to get me to answer a law question. I gave you my understanding of it. If I was mistaken, that is another matter. That is the way I understood, that the one was a good consideration for the other. That is the only answer I can make to this.

X Q. 653. Mr. Means, I do not care anything about the note of Thomas W. Means executed by you to Margaret A. Means.
549 I am asking you a categorical question that seems to be plain. I again repeat the question above asked, and would like to have you answer it.

A. I can only answer as I have answered. I considered that there was a consideration, and a good one.

X Q. 654. Where was the note of William Means to Thomas Means executed?

A. I did not see William Means execute it. I received it by mail.

X Q. 655. It bears date the 22nd November, 1888, does it not?

A. It does.

X Q. 655½. You say that these two notes were simultaneously executed?

A. No, I don't. I did not say that.

X Q. 656. I will ask the examiner to go back and read the witness' answer upon that point.

A. (The examiner reads the answer to question 651, to which the witness says:) "That is my answer as I gave it."

X Q. 657. When did you receive the note from William Means dated November 22nd, 1888?

A. It was a few days after the 22nd November. I don't know that I can give the date. I had it on the 3rd December, and made the entry on my father's book, under date of 3rd December, 1888, page 194 of Journal B, as follows:

Bills receivable	$45,000.00
Bills payable	$45,000.00

For my note dated this day in favor of Margaret A. Means at one day for which have received note of William Means, dated 22nd November, 1888, at one day to bear interest from 1st inst. for settlement as executor and trustee of estate of A. Labrot, deceased. (W. M.'s note No. 226.)

X Q. 674. I understood you to have said in your cross-examination yesterday that no money passed from Margaret A. Means to Thomas W. Means for the execution of the $45,000 note. Is that the fact?

A. No money; that was the fact. No money passed at the time of the execution of these notes from her to Thomas W. Means. It was William Means' note that was passed to Thomas W. Means.

X Q. 675. Then you paid interest to Margaret Means upon $45,000 when she never furnished the money to Thomas W. Means; did you?

A. Thomas W. Means had William Means' note bearing interest and she did not furnish cash to Thomas W. Means for the $45,000.

550 X Q. 679. After you paid the money to Margaret A. Means as you state, $45,000.00, did you stop the interest on William Means' note to your father?

A. William Means still owed it to father. He had not paid to father. It was simply his promise to pay with interest.

X Q. 680. Where was this note to Margaret A. Means executed and in whose handwriting is it?

A. It was executed here.

X Q. 681. And in whose handwriting?

A. I think it is in mine, the whole of it. It is in mine, the whole of it.

X Q. 682. By "here" what do you mean?

A. At Ashland.

X Q. 689. Signed by you as attorney-in-fact for Thomas W. Means there, was it?

A. Yes, sir.

— 692. Then, her name Margaret A. Means was not written across the back of the note, only it was paid was it?

A. No.

X Q. 694. I understand you that Margaret A. Means endorsed her name at the same time that these other endorsements were put on there?

A. At the same time that that endorsement "February 28th, paid" was put there. I wrote that endorsement there. I did not see her write. I sent the note by one of my sons to have her make her endorsement on it. I did not see her write it, but I had the note brought to me and made that endorsement there and sent it to her.

X Q. 695. Do I understand you to say that you had the note in your possession?

A. I sent and got the note.

X Q. 695½. Do I understand you to say that you had the note in your possession?

A. I sent and got the note. Had one of the boys bring it to me. I do not know which one—probably Cook, and made that endorsement on it.

X Q. 696. When did you deliver this note, after it was made to Margaret A. Means?

A. I do not know that I placed it in her hands. She had a package of papers in the bank at Ashland in which all her notes and certificates of stock, and papers of that kind were kept, and I probably placed that note in that package, and told her about it. I do not recollect the particular thing, and it is probable that I placed it on the day that it was written. That is the probability. I have no recollection of when.

551 X Q. 697. This note then was virtually in your possession from the time it was made until it was paid—was it not?

A. It was where she could get it or I could get it. It was in the bank among her papers, and I could go to the bank and get them any day, or she could go and get them without me. It was not any more in my possession than it was in hers.

X Q. 698. You were not sure that she ever saw this note until she endorsed her name across the name of it?

A. Yes, I am. I do not know when she went and looked. I told her I had made the note and for her to put it among her notes, and whether she went and looked at it I do not know. I do not suppose I took the pains to go and show it to her and read it to her.

X Q. 711. You have stated, I believe, that the note of February 20th, 1888, executed by yourself as attorney-in-fact for Thomas W. Means for $18,853.13, was for money furnished by Margaret Means

out of the sale of United States bonds. Did she raise all of it that way?

A. That was all raised by the sale of bonds.

X Q. 712. I understood you to say yesterday, that you did not use any of that money in the payment of the $125,000.00 to McConville on the day of the 15th of February, 1888. Is that a fact?

A. That is a fact.

X Q. 719. Mr. Means, there are quite a number of notes executed by William Means to your father for sums of money at different dates. Were these notes all executed at the time that William Means received the money or the benefit of it?

A. I think they were always executed after he received it, in every instance.

X Q. 725. Mr. Means, I will now incorporate the letter as a question, and ask you whether you wrote any such letter or not. The letter is as follows:

"ASHLAND, KY., *16th August*, 1888.

MY DEAR SISTER: Your two letters dated 6th inst. were handed me Tuesday, 14th, by Mr. Hunt. We saw Mr. Gilmour and desired empty the safe, but he, G., could not find the combination to open and we have written Will. to send it to Hunt. From collateral evidence I hope the contents of the safe are all right, although at first was a little uneasy when Mr. G. failed to open for us. Am expecting to leave Saturday for New York city, reaching Lily's Tuesday morning, 21st. Shall be engaged with Lowmoor business
552 two days, and after that devote a few days to Will. and Maggie.

As to Pearl, I think if she persists, that she is making a very serious mistake, the mistake of a lifetime. So long as her aunts Mary, Maggie, Hattie, and myself have so much more than we need, she nor your other daughters need fear but that all will be cared for. Besides I have hopes of saving enough for all from the wreck of father's estate yet. Please say to Gertie and Hattie, that I desire and request herself and her sisters to stay now with father and mother, and not to desert in time of greatest trouble and need.

Hoping that I may see Pearl while in the city. With love to yourself, aunt and father.

Affectionately yours, JOHN MEANS."

Witness is instructed that he need not answer that question, that it is already answered in his examination-in-chief for complainants in answer to question 419.

A. Yes, sir; that is the letter of 16th August, 1888, page 26.

X Q. 746. About how many hundred thousand dollars' worth of stock were advertised to be sold, and where were they to be sold that you recollect?

A. They were to be sold in Ashland. I do not think I could give the number of shares that were to be sold. I can give the number in two concerns.

X Q. 747. Give those?

A. Two hundred and ten shares of Means, Kyle & Co., and 175

shares of Means & Russell Iron Co. Those were the largest, and the others were not in a great amount, and I do not recollect what all there was.

X Q. 748. The shares and stock in the two companies you have mentioned were $1,000.00 shares—were they not?

A. One-thousand-dollar shares.

X Q. 749. There was some Norton Iron Co. stock, was there not?

A. I think there was, but I do not recollect how many shares.

X Q. 750. Was there some Portsmouth gas stock?

A. Yes, sir. I think there was. I think that was 70 shares at $50.00 a share, $3,500.00.

X Q. 751. Now, Mr. Means, what would have been the effect of putting that amount of stock on the market in Ashland, as it was proposed by that advertisement?

Question objected to upon the ground that it is not a cross-examination of any matter testified to by this witness-in-chief.

A. I do not believe it would have sold.

553 X Q. 752. Is that your answer in full to the question?

A. Yes, sir. I do not believe that stock could have been sold.

X Q. 753. It was not sold, was it?

A. So I am informed.

X Q. 755. Any other reason that you know of?

A. That is the only reason that I know of.

X Q. 756. Don't you know the court fixed the price which it should bring?

A. I was informed that the court fixed the price, but it did not furnish the bidders.

THOMAS M. ADAMS.

Direct examination by Mr. ANDERSON:

Q. 1. State your name, age, residence and occupation?

A. Thomas M. Adams; 39; Ashland, Ky.; have no occupation.

Q. 2. You are one of the respondents as administrator with the will annexed of Thomas W. Means, deceased?

A. Yes, sir.

Q. 4. Since your return from school—what year was that, and since that time where did you make your home?

A. I graduated at Yale in '74 and after one year in Europe, made my home with Thomas W. Means. It was in the summer of 1875 that I went to Hanging Rock to live, and continued to live there until the summer of 1878, in the family of Thomas W. Means. In the summer of 1878, at the request of Thomas W. Means, I removed to Princess furnace, Boyd county, Ky., for the purpose of looking into the business of Culbertson, Means & Culbertson and reporting the state of affairs of that company to Thomas W. Means.

Q 11. You were, I believe, appointed committee for Thomas W. Means prior to his death, by the county court of Boyd county?

A. I was appointed committee of Thomas W. Means, May 3rd, 1890.

Q. 12. Did you prepare and file an inventory of his estate at that time or prior to his death?

A. The records will show, I think. I know I prepared an inventory, May 3rd, and I think it was witnessed that month and I think filed that month. The records will show.

554 Q. 13. Have you examined what purported to be a copy of that inventory, or the stenographer's transcript of it that is a part of the record in this case?

A. I have.

Q. 14. Is it a correct copy?

A. It is not. It is full of inaccuracies and an incorrect copy.

Q. 15. Have you prepared a correct copy or have you in your possession one?

A. I have.

Q. 17. Will you produce the same and introduce the contents in evidence and ask the examiner to make it a part of your deposition?

A. I do produce such paper and ask the examiner to make the same a part of my deposition. The paper is marked Exhibit 1, copy of which is as follows:

Inventory of the Real and Personal Estate of Thomas W. Means by T. M. Adams, Committee, May 3rd, 1890.

Two hundred and sixty (260) shares of stock in Cincinnati, Portsmouth, Big Sandy & Pomeroy Packet Co. par value $100 per share, probable value $80.00 per share	$20,800 00
Six hundred and thirty (630) shares of stock in Kentucky Iron Coal and Manufacturing Co. par value $50.00 per share, probable value $50.00 per share	31,500 00
Two hundred and fifty-six and $\frac{4}{5}$ ($256\frac{4}{5}$) shares of stock in Ashland National bank, par value $100.00 per share, probable value $125.00 per share	32,100 00
One hundred and seventy-five (175) shares of stock in Means & Russell Iron Co. par value $1,000.00 per share, probable value $1,000.00 per share	175,000 00
Forty-one shares of stock in Little Miami R. R. Co. par value $50.00 per share, probable value $80.00 per share	3,280 00
Two hundred and ten (210) shares of stock in Means, Kyle & Co., par value $1,000.00 per share, probable value $1,000.00 per share	210,000 00
Nine hundred and seventeen (917) shares of stock in Roan Mountain Steel & Iron Co., par value $100.00 per share, assumed value $30.00 per share, market value unknown	27,510 00
Seventy shares of stock in Portsmouth Gas Light Co., par value $50.00 per share, probable value $50.00 per share	3,500 00

555 Twelve (12) shares of stock in Norton iron works, par value $1,000.00 per share, probable value $500.00 per share 6,000 00

Seven hundred and twelve (712) shares of stock in Ashland Coal & Iron Railway Co., par value $50.00 per share, probable value $35.00 per share 24,920 00

One hundred and fifty (150) shares of stock in Lowmoor Iron Co., par value $100.00 per share, probable value $125.00 per share 18,750 00

Two hundred and eighty-nine (289) shares of stock in Second National Bank of Ironton, O., par value $100.00 per share, probable value $100.00 per share 28,900 00

Two (2) bonds of Mt. Auburn Cable R'y Co., par value $1,000.00 each probable value $1,000.00 each, rate of interest 5 % 2,000 00

Twenty-five (25) bonds of Eureka Company of Oxmoor, Ala., rate of interest 7 %, par value $1,000.00 each, probable value $1,000.00 each 25,000 00

One hundred (100) bonds of levee district No. 5, of Sutter county, California (reclamation bonds), par value $500.00 each, worthless .....

Twenty-six hundred and twenty-nine (2,629) detached coupons of levee district No. 5, of Sutter county, California (coupons of reclamation bonds), par value $20.00 each. They represent accrued interest, worthless .....

Residence, property in Ashland, Ky., comprising six (6) lots Nos. 1, 2, 3, 7, 8, 9; range 6 W 10,000 00

Lots Nos. 50 and 53 Hanging Rock, O., rent for $100.00 per annum 800 00

Lot No. 69, per annum, no rent 20 00

Lot No. 90, " " no rent 40 00

Lot No. 99, " " rents for $72.00 per annum 350 00

Lot No. 104, per annum, no rent 40 00

Lot No. 109, " " " " 40 00

Lot No. 114, " " " " 40 00

Lot No. 119, " " " " 20 00

Lot No. 120, " " " " 20 00

Lot No. 92, west half only, per annum, no rent .. 10 00

556 Lot No. 101, per annum, rents for $84.00 per annum 350 00

One farm in Scioto Co., Ohio, Green township, being parts of lots 26 and 27 French grant, comprising about one hundred and fifty-three (153) acres, rents for an amount barely sufficient to pay the taxes, which for the year 1889 are $66.52 ..... 2,500 00

Lot No. 13, part 5th ward, Portsmouth, Ohio, 60 ft. front, no rent 290 00

Lot No. 63, part 5th ward, Portsmouth, Ohio, 64 ft., no rent 509 00

	Lot No. 8, part 5th ward, Portsmouth, Ohio, 30 ft., no rent	320 00
	Lot No. 9, part 5th ward, Portsmouth, Ohio, 30 ft., no rent	320 00
	Note of Thomas A. Mack, Oct. 12th, '86, 1 yr. 7 %, $15,000.00 (collateral 372 shares of Eureka Company), less payment Feb'y 14th, '89, $7,455.83, leaving balance at that date	10,000 00
	Note of Thomas A. Mack, April 29th, '87, 1 yr. 7 per cent., $10,000.00 (collateral 201 shares of Eureka Company) interest payment Feb'ry 16th, '89, leaving balance at that date	10,000 00
	Note of S. S. Savage, 11th May, 1889, 1 day, (collateral 10 shares of Ashland Fire Brick Co.)	700 00
	Note of R. Mather, March 9th, 1880, 1 year, 8 per cent., interest paid to September 9, '81	573 55
	Note of Wm. Means, Nov. 22, '88, 1 day, interest from Dec. 1, '88	45,000 00
	Note of Wm. Means, August 20, '88, 1 day	5,041 67
	Note of Wm. Means, Nov. 9, '88, 1 day, amount of note $75,000.00, payment Feb. 28, '90, $75,000.00, leaving interest due only.	
	Note of Wm. Means, Dec. 3rd, '88	2,713 88
	" " " Sept. 25th, 1888, 1 day	7,400 00
	" " " Nov. 17, '88, 1 day	1,620 00
	" " " Oct. 24, '88, 1 day	2,100 00
	" " " Nov. 9th, '88, 1 day	497 13
	" " " March 19, '88, 1 day	
	$15,027, less sundry payments $9,900.00, leaving balance due on the note	5,127 00
557	Due bill of William Means, Feb'ry 15th, '88, $125,911.74, less sundry payments $84,884.28, leaving balance due on due bill	41,027 46

A life interest in the following-described property in Hamilton township, Lawrence Co., Ohio, range 18, township 1, section 7, S. W., S. E., 40 acres, value $300.00; S. ½, S. W. 80 acres, value $600.00; section 18, p't sec. 148.08 acres, value $16,860.00. In range 19, section 12, E. p't frac., 14 acres, value $5,290. Hanging Rock lots, Nos. 106, 107, 111, 112, 113, 115, 116, 117, 118, 121, 122, value $20.00 each. The above-described real estate was the property of Sarah Means, the deceased wife of Thomas W. Means. The said Thomas W. Means has only a life interest in the same. This realty pays an annual rent of about twelve hundred ($1,200) dollars.

	One account on Means, Kyle & Co.	230 31
	One account on Ashland Coal and Iron Railway Co., interest to March 31, '90	1,701 15
	Cash in Ashland National bank	36,196 20
	Cash in Second National Bank of Ironton, O.	1,589 50

Household furniture and silverware		850 00
Two buggies		175 00
Two cows		50 00
Fifteen tons timothy hay at Hanging Rock, O., at $7.00		105 00
Deduct note of T. W. Means in favor of W. W. Culbertson, dated July 13th, 1888, 1 yr	$3,156 21	
Deduct note of T. W. Means in favor of Mary A. Adams, Sept. 26, 1888, 1 day	1,500 00	
Deduct account of M. A. Means and M. A. Adams against T. W. Means. His share of household expenses since Nov. 6, '89	239 79	
		4,896 00
Net amount		$792,721 85

Q. 18. Have you a supplemental inventory of yourself as committee, and if so, will you produce it and introduce the contents of the same as part of your deposition and ask the examiner to identify the paper as Exhibit 2?

A. I now hand him a statement of Thomas Adams, committee to Thomas W. Means, from May 3rd, 1890, to June 8th, 1890, which was the period of my committeeship. These are things that came in during my committeeship in addition to the items on the other paper.

558 Copy of Exhibit 2 is as follows:

Statement of T. M. Adams, Committee to Thomas W. Means, from May 3rd, 1890, to June 8th, 1890.

Receipts.

1890.		
May 12.	Dividend Cincinnati, Portsmouth, B. S. & P. Packet Co.	$1,300.00
May 31.	Dividend Ky. Iron, Coal & Mfg. Co. No. 9	3,150.00
June 1.	Dividend Norton iron works No. 6, 3%	360.00
May 5.	Dividend Second National bank, Ironton, O., 3%	867.00
	Total	$5,677.00

Statement of Means, Kyle & Co.'s Account with Thos. W. Means from May 3rd to June 8th, 1890.

1890.			
May 3.	To balance		$230.31
" 7.	" 67 bus. com. to O. B. Gould from Samuel Gillen		23.45
" 31.	" rent from Belcher		7.00
	" " " Loder		5.00
	" " " Markins		5.00
	" " " Belcher, 8 days		1.84
	" " " Loder, 8 days		1.33
	" " " Markins, 8 days		1.33

1890.		Cr.		
May 5.	By cash, labor assisting surveyor	.....	.....	2.00
" 21.	" A. Winters & Co., glass and oil	....	.....	4.05
" 30.	" repairing country house	.....	.....	132.05
" 13.	" F. G. Leet, surveying	.....	.....	17.50
June 3.	" repairing, Belcher and country house	.....	.....	78.76
" 9.	Balance	.....	.....	40.90
			$275.26	$275.26
1890.				
June 9.	To balance	.....	$40.90	

Q. 19. I will ask now if you have examined the inventory filed by complainants of yourself and E. C. Means, administrators, with the will annexed, of Thomas W. Means, which is made a part of the record in this case.

A. I have.

Q. 20. Is it correct?

559 A. It is in the main correct. There are some minor errors.

Q. 21. Can you state what the errors are and have them corrected now?

A. I can. In the item of the inventory filed, of Ashland Coal and Iron Railway Co., the certified copy omits the number of shares which in the original is seven hundred and twelve (712). And also in the item of note of William Means, March 14th, 1888, should be March 19th, 1888, and the item of note of William Means, November 3rd, 1888, should be December 3rd, 1888.

Q. 22. Have you examined the transcript of the stenographer made a part of this record of the settlement filed in the Boyd county court, of date January 21st, 1893, by yourself and E. C. Means, as administrators with the will annexed of Thomas W. Means? If so, is it correct?

A. It is correct with the exception of the entry of June 15th, 1892, among the receipts, which recites 1,892 detached coupons when it should recite 1,972. There is an inaccuracy in the footing of folio 1 of the receipts and the amount carried forward. The copy has it $171,873.03 when it should be $222,235.73. This is caused by not adding $50,382.70 at the top of the page.

Q. 23. State what paper you now hold in your hand and when you first saw it, as nearly as you can tell.

A. It is an order dated June 16th, 1890, Ashland, Ky., and signed by William Means and witnessed by S. B. E. Drenan and James Means. It came into my possession on that date.

Q. 24. I will ask you to read the same as a part of your deposition.

A.—

Ashland, Ky., *June* 16, 1890.

I hereby direct the executors of the will of Thomas W. Means, or the personal representative hereafter to be appointed, to charge

against my distributable share as heir-at-law of Thomas W. Means or as devisee under his will the notes heretofore given by me to Thomas W. Means; and I do further hereby assign such interest or share or sufficient thereof to pay and discharge such notes.

WILLIAM MEANS.

Witness:
S. B. E. DRENAN.
JAMES MEANS.

Endorsement on the back of this paper reads as follows:

This paper came into the possession of the undersigned June 16, 1890, and has been held jointly since. And now, as administrators with will annexed of Thomas W. Means, deceased,
560 and upon our appointment and qualification as such we note and endorse hereon its delivery and acceptance to and by us.

E. C. MEANS,
T. M. ADAMS,
Administrators, with Will Annexed, of Estate of Thomas W. Means.

July 29, 1890.

Attest:
JOHN F. HAGER.
W. P. SEATON.

Paper is identified by date and signature of examiner.

Complainants object to the production and testimony in regard to the paper just copied into the record, because the same was revoked by William Means afterward, and having been revoked of course is a nullity and irrelevant and incompetent for any purpose in this case.

Q. 24. Who signed the name William Means to that paper?

A. That is William Means' signature. He signed it.

Q. 25. In whose handwriting is the body of that paper above his signature?

A. It is the handwriting of William Means, all the body of the paper.

Q. 26. State what is the paper you now hold in your hands?

A. This is a paper dated Ashland, Ky., June 17th, 1890; addressed "To whom it may concern."

Q. 27. By whom is it signed?

A. Signed by William Means. It is in his handwriting. The entire paper is in the handwriting of William Means.

Q. 28. Will you read the same as a part of your deposition?

A.—

ASHLAND, KY., *June* 17, 1890.

To whom it may concern:

This is to certify that my object in signing a certain paper dated June 16, 1890, in which the executors of the estate of Thomas W. Means are directed to charge up my obligations against my interest in said estate, was done to insure the estate against loss through the

purchase of such obligations, no matter how obtained and for no other purpose whatever.

WILLIAM MEANS.

Q. 29. Who signed the name William Means?
A. That is William Means' handwriting. He signed it.
Q. 30. When did you first see that paper about?
A. About June 17th, the date it bears.
Q. 31. Will you ask the examiner to identify the paper?
A. Yes, sir.

561 The paper is identified with the date and signature of the examiner.

Q. 32. Was it delivered to you at that time?
A. I think it was—about that time—I know it was, but I could not state positively the day. It was within a few days of that time, if not on that day.

Question and answer objected to for the same reason that the former paper was objected to.

Q. 33. State what paper you hold in your hand.
A. This is a paper identified by B. Perin, sp. ex., at Cincinnati April 6th, 1893, addressed to the executors and legal representatives of the estate of Thomas W. Means, deceased, and E. C. Means and Thomas W. Means individually and signed by William Means.
Q. 34. I will ask you to read that paper, except the marginal entry thereon, as a part of your deposition.
A. The paper, except the marginal entry, is as follows:

To the executors and legal representatives of the estate of Thomas W. Means, deceased, and to E. C. Means and Thomas M. Adams individually.

GENTLEMEN: Inasmuch as by a certain paper dated June 16, 1890, it is claimed that I authorized certain notes to be deducted from or charged against my distributable share as heir-at-law of Thomas W. Means and further assigned certain interests to pay said notes. Now this is to notify you and all other persons interested therein that I hereby revoke and annul said paper-writing and all consent and authority conferred by it, and declare said paper to be null and void for any purpose whatever. And you are notified not to deliver said paper to any person or make any use of the same, and I make this notification for the following, among other, reasons:

1. That said paper was not to be delivered without my consent.
2. Said paper was wholly without consideration and inoperative for any legal purpose.
3. Said paper was signed without legal advice or proper information as to the contents or meaning.
4. Said paper was obtained from me in ignorance of important facts and of my legal rights.
5. Said paper was obtained under circumstances that make it inequitable that I shall be bound by it.

6. Said paper was not intended to be used in any manner against my interests or desire.

Yours respectfully, WILLIAM MEANS.

Ashland, Kentucky, July 28th, 1890.

562 Q. 35. I will ask you if you will also read the marginal entry on said paper, as a part of your deposition?

A. Yes, sir. The marginal entry reads as follows:

"To E. C. Means and Thomas M. Adams, administrators, with will annexed, of Thomas W. Means:

The matter of revocation contained in this notice and this notice and paper are hereby revoked.

WILLIAM MEANS."

Oct. 4th, 1890.

Att.: JOHN F. HAGER.

Q. 36. When did you first see this paper that has been introduced, the body of it?

A. I first saw it on the day I was appointed one of the administrators of the Thomas W. Means estate.

Q. 37. Well, state where you saw it.

A. I think it was handed to me at Catlettsburg at the court-house at the time I was appointed.

Q. 38. And as soon as it was announced that you were appointed?

A. Either before or just after. I don't remember which.

Q. 39. By whom was it handed to you?

A. Well, now, I am not certain about that. I think it was Evan Williams or Isaac Jordan. I don't remember which.

Q. 40. In whose handwriting is the body of that paper, omitting the marginal entry?

A. It is all in the handwriting of William Means, including the signature.

Q. 41. Was William Means at Catlettsburg at the time that the paper dated July 28th, 1890, that you have just read was served upon you or handed to you?

A. My recollection is that it was but I am not so certain about that.

Q. 42. Were you present at the time the rev[illegible]ion of that paper was written on the margin thereof, that has b[illegible]n read as a part of your deposition, was signed by William Mea[illegible]?

A. I was.

Q. 43. Where was that done?

A. In what is known as the improvement company office here in Ashland.

Q. 44. Who else was present?

A. William Means and John F. Hager, and of course I was there and I think Evan F. Williams was there, but I am not positive.

Q. 45. Any other persons that you recall?

A. I think Cook Means was there.

563 Q. 46. When did you first meet William Means that day that you recall?

A. I cannot recall that, whether I met him before I met him there or not. I don't know.

Q. 47. Do you know how you came to meet him? Was it by any solicitation or arrangement between you and him, or did he just come, on the fourth of October?

A. Well, some one told me—I don't know whether it was William or Cook Means or who it was—that William Means intended to revoke this paper of 28th of July, 1890, and that his object in revoking it was that the order of June 16th might continue in force which directed the representative of the estate of Thomas W. Means to charge against his distributable share the notes theretofore given by him to Thomas W. Means. I was told that he wanted to revoke this paper for that purpose, in order that the paper of June 16th might remain in force and that he also wanted the account that mother has against him and he wanted to pay that and also wanted to pay the individual account that John Means held against him and also Margaret A. Means and I was told that I must ascertain the amount of my mother's account, Mrs. Adams' account and bring it to the improvement company office and that he was prepared to give an order on the estate of Thomas W. Means to be paid out of his distributable share. I made out such an account and took it to the improvement company office and there I met John F. Hager and William Means and there I saw him sign the revocation of the paper of July 28th.

So much of this answer as refers to what he heard, if he did not get his information from some one of the parties to this suit in the presence of some other of the complainants and defendants is objected to.

Q. 48. You are not able to state just now who it was that notified you to be present at that meeting?

A. No, I cannot.

Q. 49. Have you no impression about it? Can't you give your best impression about the matter, whether it was any of the parties you met there?

A. Yes. It was some one of those parties who did tell me.

Q. 50. You are not able to state whether it was Mr. William Means or not?

A. No, I don't know.

Q. 51. Did you hear any conversation at that time with Mr. William Means about that matter of paying the individual
564 claims of your mother and Miss Margaret Means and Mr. John Means, and hear Mr. William Means say anything about it on the fourth of October?

A. Why, he said he wanted to pay those accounts and that he wanted to give an order on the estate of Thomas W. Means for it, or receipt, or something of that kind. I don't know just the way he proposed to do it then, whether to give a receipt or an order.

Q. 53. Well, did he say anything at that time about paying a

balance upon the $280,000.00 and some odd dollars that the estate of Thomas W. Means was claiming against him?

A. Did he say anything about payment?

Q. 54. Yes, about that claim, at this meeting of October 4th, in your presence?

A. Yes, sir. He said he wanted to pay it—pay it to the estate.

Q. 55. Well, go on and state what you recall of what he said upon that occasion as to any of those claims, the individual claims of your mother and Margaret Means and John Means, and your claims also as executor or administrator of the estate?

A. I don't know that I can add to what I have already stated.

Q. 56. Do you recollect the day of the week that this was?

A. I think that this was Saturday night. October 4th, 1890, was Saturday night. It was after dark, I remember.

Q. 57. When you had the meeting?

A. Yes, when we met in the improvement company office.

Q. 58. What become of him, if you know, after the meeting?

A. Why, he and Williams went away. They said they were going to Ironton—had to go to Ironton. Yes, I remember Evan Williams was with him on this occasion. I am certain of that. He and Evan Williams said they had to go to Ironton and that they would come back that night, but they did not return that night. We waited for them there in the improvement company office till a late hour. I think the intention was to give an order. I think his intention of returning that night was to give an order or receipt to us for the amount he owed John Means, Margaret Means and Mary A. Adams.

Counsel for complainants objects to so much of the answer as relates to what he thought their intention was for coming back that night.

Q. 59. Well, just state what he expressed as his intention
565 whether he, or Williams in his presence stated that as his intention before they left?

A. I don't know that I can——

Q. 60. What was your understanding about what they stated?

A. Why, I have already testified as to that, Mr. Anderson.

Q. 61. Well, you understand that you have expressed their intention. How did you get at what that intention was?

A. Why, from what they both said—both Evan Williams and William Means.

Q. 62. State the substance of what they said in that respect?

A. The substance was that William Means wanted to pay the estate of Thomas W. Means out of his distributable share in that estate the amount of his notes, with interest—the amount of his notes to that estate, or rather, to Thomas W. Means, with interest, and that he also wanted to pay John Means, Margaret Means, and Mary A. Adams their individual accounts against him.

Q. 63. Well, did either of them state why they had to go to Ironton that evening and then come back that night?

A. I don't recollect of any reason they gave for going to Iron-

ton. They said they had to go but that they would return that night.

Q. 64. Did they return that night?

A. They did not.

Q. 65. Either of them?

A. Not to where we were. We saw no more of them. We waited for them until a late hour, until after the time of the train from Ironton.

Q. 66. What time was that?

A. Why, I don't know. I suppose perhaps eleven o'clock—half past ten. My impression is, though, that we waited there until about twelve o'clock Saturday night in order to see them in case they returned. They promised that when they would come back, they would come back to that office, and that is the reason we waited there.

Q. 67. When did you next see William Means after that meeting?

A. I don't think I saw William Means from October 4th until October 16th.

Q. 68. Where did you see him then?

A. On October 16th, shortly before supper time, William
566 Means and Charles W. Baker and Evan F. Williams and Cook Means, all came to our residence here in Ashland, I think perhaps an hour before supper time.

Q. 69. Did you know that they were coming before they arrived, or any of them, that evening?

A. Well, if I did know it, I have forgotten now. I don't recollect of knowing. I don't think I knew anything about it until they got there.

Q. 70. You have mentioned the parties that were along. Was Mr. Hager along or not?

A. I am not certain whether Mr. Hager arrived when the others did, or not. He was there during the evening but these other parties that I have mentioned were there at supper and whether Mr. Hager was there at supper or not, I do not recall. He was there directly after supper. I recall that.

Q. 71. Mr. Charles W. Baker is the attorney of Cincinnati that has testified in this case?

A. Yes, sir.

Q. 72. Well, what took place there that evening?

A. Well, Charles W. Baker said that they had come up to make a settlement with the estate of Thomas W. Means; that is, that William Means wanted to make a settlement with the estate of Thomas W. Means and execute a receipt to the estate of Thomas W. Means for the amount of his notes held by the estate of Thomas W. Means, with interest, and also that William Means wanted to pay the individual account of John Means and Margaret Means and Mary A. Adams against him, out of his share of the estate if there was enough of the estate after the notes and interest were paid—if there was enough remaining that William Means wanted to pay John Means and Margaret Means and Mary A. Adams the

accounts due them. If there was enough and there was any surplus after the notes and interest were paid, that he wanted to prorate the residue on these debts due these individual parties that I have named. William Means also said the same thing in substance.

Q. 73. Well, you have stated what was said, now what was done?

A. Well, after supper we gathered together in the parlor and they wrote out their receipts. That is, they—William Means wrote out the receipts. There was some talk of giving a receipt for the whole thing. I mean by the whole thing the amount of the notes with interest and also the amount due John Means, William Means and Mary A. Adams—to make one receipt answer for all.

Q. 74. Do you mean for the $136,000.00?

567 A. $136,000.00 receipt and the $26,000.00 receipt, they intended originally—at least I gather from their talk that they intended to make one receipt of it, and that I objected. I said: "No, I would not have it in one receipt." That as I understood the law from consultation with our counsel, the indebtedness of William Means to the estate, the administrators, represented by the notes to Thomas W. Means, which we held, was an indebtedness which could never be questioned in the courts, that *I* receipt for it could never be questioned in the courts, but that the indebtedness due John Means, Margaret Means and Mary A. Adams was an indebtedness that might be set aside by other creditors under the Kentucky statutes, and because of this distinction I did not want the net indebtedness of William Means to the estate of Thomas W. Means mixed up in any manner with the other indebtedness, because I was afraid if it was all one receipt the courts might throw out the whole transaction—set the whole transaction aside. For that reason I insisted on two receipts; one for the 136,000 and odd dollars and one for the 26,000 and odd dollars and those receipts were executed by William Means and witnessed by A. E. Lampton of Ashland. I suggested also that there should be no confounding or fixing up of the two indebtednesses, that the $26,000 receipt be dated a day or two later than the $136,000 receipt, and that was done, the $26,000 receipt was dated a day or two later although that receipt was executed at that time and witnessed at that time. William Means wrote out the $136,000 receipt, in his own handwriting and signed it and it was witnessed at that time by E. Lampton, and he also signed a duplicate receipt which was also witnessed by E. Lampton which was in my handwriting for the $136,000. He also signed a duplicate and original receipt for the $26,000, which were both witnessed by E. Lampton.

Q. 75. State if the receipt that was signed by William Means for the $136,000 and also for the $26,000 were submitted to his attorneys Baker & Williams before they were signed?

A. They were.

Q. 76. State whether they were approved by them?

A. They were.

Q. 77. Was there anything said or suggested by William Means or by Evan Williams or by Mr. Baker in your presence and hearing

to the effect that those receipts, or either of them, were for the purpose of defrauding the creditors of William Means or any of them, or any other person or persons, if so, state what was said?

568 A. Baker said that they wanted to pay the estate of Thomas W. Means, that William Means wanted to pay the estate of Thomas W. Means in preference to the indebtedness to other creditors of his, of William Means.

Q. 78. Was there anything said that the transaction of paying the estate of Thomas W. Means was or was not a *bona fide* payment?

A. Why, it was a *bona fide* thing, of course.

Q. 79. Was that subject discussed, whether it was or not?

A. No. He said he wanted to pay the indebtedness to the estate. There was no suggestion of anything else than a *bona fide* transaction by any of the parties present at that time.

Q. 80. Had you, at that time or at any time, prior to the hearing of the testimony of Evan Williams in this case, heard any question as to whether this indebtedness was *bona fide* or not?

A. I never heard. Evan Williams was the first man I ever heard suggest that this transaction was not a *bona fide* one and I never heard him suggest it at all until he deposed in this case.

Q. 81. Was there anything said in either of the interviews to which you have referred, to the effect that William Means would sign the $136,000.00 receipt in consideration that, as administrators with the will annexed you and Cook Means would pay to him $25,000.00, or any other sum; if so, state what was said?

A. There was no talk in my presence by Evan Williams, or any other man, or William Means, of any such condition for signing those receipts, or either of them.

Q. 82. Did you hear, prior to the execution of the $136,000 receipt of any such condition or consideration for signing it from Cook Means or any other person; if so, state what you heard?

A. I never heard any proposition of that kind from any source prior to the signing of those receipts of October 16th, neither of the 136,000.00 receipt nor the $26,000.00 receipt.

Q. 83. You were not present at the interview in the hotel on the day that the $136,000.00 receipt was signed, to which Mr. Williams testified in his evidence in this case?

A. I was not present at that meeting.

Recess until 2 o'clock.

Afternoon session.

Q. 84. When did you first learn that any such claim was
569 set up by any one as that the $136,000 receipt was signed by William Means in consideration that $25,000 or any other sum should be paid to him by you and Cook Means as administrators?

A. I cannot answer that. I don't know when. I can't fix the time when I first heard it.

Q. 85. Let me refresh your memory. Did you ever hear of any such claim before you read it in the bill in this case?

A. If I did, I don't remember it.

Q. 86. Did anybody mention this to you prior to your reading it in the bill in this case?

A. No, nobody. There might have been a rumor that such a thing was said.

Q. 87. Do you have any recollection of anybody saying that?

A. You know I met Williams down at the hotel. He said I promised him $25,000.

Q. 88. Did he state that as a condition of signing the other paper?

A. No. He said I had promised him $25,000 and I told him he was a damned liar.

Q. 89. When did he meet you at the hotel and make that statement to you?

A. I can't give you the date. It was when Mr. Whitaker and Mr. Glidden and General Cowen were here.

Q. 90. Is that the time when Mr. Williams states in his deposition that you and he had a slight personal encounter?

A. It was that time. I don't know whether he states it in his deposition or not. It was that time, though.

Q. 91. Was that before or after this suit was commenced?

A. That was before.

Q. 92. Can you approximate the date when it happened? State about how long it was before this suit was commenced.

A. (Bill shown to witness.) I think it was in October, 1891.

Q. 93. State whether or not, prior to the date of that controversy between you and Mr. Williams, you had ever heard from William Means, Mr. Williams or any other person, any claim that you and E. C. Means, or either of you, promised to pay William Means $25,000 or any other sum.

A. Why, I didn't hear it then. All I heard was that I promised to pay him $25,000. He did not say for what purpose, or why.

570 Q. 94. You say you did hear it then. Had you heard it prior to that time; that is, that you were to pay William Means any sum?

A. I have no recollection of hearing before that time, and I did not hear it at that time.

Q. 95. When is the first time that you learned that there was any such claim?

A. Well, now, I might have heard it after this row with Williams.

Q. 96. Did you? You know whether you recollect of hearing it then?

A. No, I do not recollect of hearing it then.

Q. 97. State what is your recollection of it, whether you recollect hearing it prior to the time of filing the bill.

A. Well, I have already stated that I do not recollect of hearing of it prior to the filing of the bill.

Q. 98. Was there anything said in the interviews that you have referred to on the 4th of October, when the revocation was revoked, and on the 16th of October, when the $136,000 receipt and the

$26,000 receipt was signed, in your presence or hearing, with reference to paying William Means the money that the $26,000 receipt represented, which was to be paid to John Means, William Means and your mother, after they should receive it? If so, state what.

A. Prior to the signing of the receipts?

Q. 99. Yes, sir.

A. Nothing was ever said in my presence or hearing of paying William Means all or any part of that $26,000.

Q. 100. Did you learn from Cook Means or Mr. Hager that the $26,000 or any part of it was to be paid to William Means by your mother, John Means or Miss Margaret Means, after the same had been paid to them by the administrators?

A. Whether they were to pay it to her?

Q. 101. Yes.

A. I never heard of any such arrangement prior to the signing of these receipts for $136,000 and $26,000.

Q. 102. When did you first learn of any such claim being set up by William Means or any other persons claiming under him.

A. I have no recollection of any—of hearing of any such claim until this bill was filed.

Q. 103. The bill sets up that that much money was to be paid to William Means by the administrators; Williams in his evidence sets up that it was to be paid William Means by the parties
571 who received it—John Means, Margaret Means and Mrs. Adams. When did you first hear that claim made, if at all, heretofore?

A. I never heard of that claim until Evan Williams deposed in this case.

Q. 104. Have you the receipt for $136,000 that William Means signed upon that occasion and drew?

A. Yes, sir.

Q. 105. Will you produce the same, and read same as a part of your deposition?

A. Yes; it is as follows:

ASHLAND, KY., *October* 16, 1890.

Received of Thomas M. Adams and E. C. Means, administrators with the will annexed of the estate of Thomas W. Means, deceased, the sum of one hundred and thirty-six thousand and thirty-five and $\frac{75}{100}$ dollars, being a part of my distributable share as legatee under said will applied by them as ordered by me upon the following notes and claims owed by me to the estate of said decedent, and payable to his order, viz:

Forty-nine thousand nine hundred and ninety-five dollars, applied on my note dated 22nd November, 1888, one day, interest from December 1, 1888, for $45,000.

Fifty-six hundred and eighty-five and $\frac{32}{100}$ dollars applied on my note of August 20, 1888, one day for $5,041.67.

Six thousand and seventy-five and $\frac{50}{100}$ dollars applied on my note of Nov. 9, 1888, one day, for $75,000.

Eight thousand three hundred and one and $\frac{56}{100}$ dollars applied on my note of Sept. 25, 1888, one day, for $7,400.

Eighteen hundred and three and $\frac{33}{100}$ dollars applied on my note of Nov. 17, 1888, one day, for $1,620.

Twenty-three hundred and forty-five and $\frac{10}{100}$ dollars applied on my note of October 24, 1888, one day, for $2,100.

Five hundred and fifty-four and $\frac{4}{100}$ dollars applied on my note of Nov. 9, 1888, one day, for $497.13.

Six thousand five hundred and eighty-three and $\frac{64}{100}$ dollars applied on my note of March 19, 1888, one day, for $15,027.

Fifty-one thousand six hundred and seventy-seven and $\frac{90}{100}$ dollars applied on my due bill of Feb. 15, 1888, for $125,911.74.

Three thousand and thirteen and $\frac{76}{100}$ dollars applied on my note of December 3, 1888, for $2,713.88.

572 This receipt is given in pursuance of settlement made October 6th, 1890.

WILLIAM MEANS.

Attest:
JOHN F. HAGER.
A. E. LAMPTON.

This is all in the handwriting of William Means except the witnesses and the attest.

Q. 106. Will you let the examiner identify this paper?

A. I will.

Paper is identified with date, and signature of examiner.

Q. 107. This receipt which you have just read, is the $136,000 receipt that is referred to throughout this record?

A. It is the identical receipt.

Q. 108. Did you see William Means write it?

A. I did. He wrote it in our parlor on the evening of October 16, 1890, in my presence and in the presence of Evan Williams and Charles W. Baker and John F. Hager, and witnessed it in the presence of A. E. Lampton and John F. Hager.

Q. 109. I notice this receipt speaks of a settlement as of the sixth. The last sentence, "This receipt is given in pursuance of settlement made October 6, 1890." Why is that settlement referred to as of October 6, 1890, in this receipt, when Mr. William Means, according to your statement, was not here between October 4th and 16th?

A. William Means signed the revocation of the revocation of the order of June 16th, October 4th, which was Saturday. He signed it in the evening. On the morning of October 6th, which was Monday morning, E. C. Means and myself entered upon our books as administrators of the estate of Thomas W. Means—we charged William Means with his notes and interest calculated to October 6th, amounting to $136,035.75. We charged on the books the notes and interest of that amount to his distributable share, and this receipt refers to that settlement of October 6th—that we called the settlement of October 6th, and this receipt refers to that. It was late Saturday night when he signed his revocation of the revocation, or at least it was after dark, and his notes then were not accessible. They were locked up in the bank and we could not get at them to

compute the interest on them, and as soon as we could obtain
573 them and compute the interest on them, we did so, and that was October 6th.

Answer objected to in so far as the statement speaks of entries on the books by the witness and E. C. Means in the absence of William Means.

Q. 110. Was William Means advised at the time that he signed this receipt, that you and Mr. Means, as administrators of his father's estate were claiming that balance of $136,000, and something against him upon the notes that he had given his father?

A. He was so advised, and in order to complete the transaction, gave this receipt.

Q. 111. Had he had access prior to that time, after the death of his father, to the books of Thomas W. Means, and to his account therein; if so, state when and where?

A. I showed him the books of Thomas W. Means, let him examine them, after the death of his father—within a few weeks after the death of his father, and he did examine them.

Q. 112. Where were you at the time of the examination?

A. It was at the Ashland National bank. I was present.

Q. 113. Well, with reference to him in the room, where were you?

A. He was at one end of the room and I was at the other.

Q. 114. Mr. Williams has stated that Mr. Means stated to him that you were looking over his shoulder, and for that reason he would not examine the books. What is the fact about that?

A. I did not look over his shoulder once during his examination of the books.

Q. 115. About how long did he examine the books?

A. My recollection is that it was about a half an hour.

Q. 116. What books did he have?

A. He had the ledger and journal.

Q. 117. Were they the books that contained his account with his father and his current account?

A. He had the ledger and two journals.

Q. 118. Did they contain his accounts that have been introduced in evidence in this case? Were they the same books that contained those accounts, copies of which have been introduced in evidence?

A. They were the same books. They were the books of
574 Thomas W. Means—his account books—his two journals and ledger. The accounts begin about '55, I think, and are kept up to within a few months of his death, in 1890.

Q. 119. Did he make any request then of you, or at any other time, that he might examine those books in your absence?

A. He never made a request of me that he might examine those books, but I offered to show them to him. I told him that if he would like to look at the books that they would be open to his inspection, and he said he would, and I showed them to him at the Ashland National bank. He never made any request at any time.

Q. 120. Did he make any complaint at that time or after that to you, that he did not want to examine them in your presence?

A. He did not.

Q. 121. Was this receipt for $136,000 delivered at the time it was signed—on the date that it bears?

A. It was.

Q. 122. To you and Mr. Means as administrators?

A. Yes, sir. It was delivered to me personally. Mr. E. C. Means did not remain through the evening, but it was delivered to me for both of us.

Q. 123. At the same time did he deliver the $26,000 receipt that was signed then?

A. He did, at the same time.

Q. 124. I will ask you when after that you next saw Mr. Means?

A. This was October 16th. I saw him October 18th, two days later.

Q. 125. Well, where?

A. He came to our residence.

Q. 126. What paper is it you now hold in your hands?

A. The paper in my hands is a receipt of William Means, dated Ashland, Ky., October 18th. It is October 17th, and then it is changed to 18—the 8 is made over the 7—'89. It is marked "Exhibit 63, B. Perin, sp. ex. Cin'ti, O., April 4." It is a receipt for $26,240.79, executed to Thomas M. Adams and E. C. Means, administrators, with the will annexed of Thomas W. Means, deceased.

Q. 127. Will you read the same as a part of your deposition?

A. It is marked "Duplicate."

Received, Ashland, Kentucky, October 18, 1890 (as I said before, it is Oct. 17, but the 8 marked over the 7), of Thomas M.
575 Adams and E. C. Means, administrators, with will annexed of Thomas W. Means, deceased, the sum of twenty-six thousand two hundred and forty and $\frac{79}{100}$ — ($26,240.79), being part of my distributable share as legatee under the will of said Thomas W. Means, deceased.

WILLIAM MEANS.

Att.: A. E. LAMPTON.

Marked "Ex. 63, Cincinnati, O., April 4, 1893. B. Perin, sp. ex."

Q. 128. Read the endorsements on the same, if there are any?

A. There is endorsed on the back—

John	8,478 33
Margaret	16,112 46
Mary A	1,650 00
	$26,240 79

Q. 129. In whose handwriting is the body of that receipt?

A. John F. Hager's.

Q. 130. Who signed William Means' name?

A. That is William Means' signature—his handwriting.

Q. 131. Did you see him sign it?

A. I did. I was present. Attested by A. E. Lampton.

Q. 132. Is this the $26,000 receipt that has been spoken of as signed on the 16th of October, 1890?

A. It is.

Q. 133. Now, upon the 18th of October, you say that William Means was here again?

A. And came to our house.

Q. 134. What took place upon that meeting, if anything?

A. William Means came to our residence and asked me to go down with him to the drug store of A. E. Lampton, that he wished to have him witness his signature to a paper. I went with him to A. E. Lampton's drug store and A. E. Lampton witnessed his signature to a paper.

Q. 135. Have you that paper?

A. I have.

Q. 136. Will you produce the same to the examiner and read it as a part of your deposition?

A. This paper he signed and had witnessed in duplicate that I am about to read:

Received, Ashland, Kentucky, Oct. 18th, 1890, of Thomas M. Adams and E. C. Means, administrators with will annexed
576 of Thomas W. Means, deceased, the sum of twenty-six thousand two hundred and forty and $\frac{79}{100}$ dollars ($26,240.79) being part of my distributable share as legatee under the will of said Thomas W. Means, deceased.

WILLIAM MEANS.

Attest: A. E. LAMPTON.

This is in William Means' handwriting and the signature is in William Means' handwriting, signed by him. And this receipt he signed and had witnessed in duplicate, and I have also the duplicate.

Q. 137. What did he say his purpose was in doing that?

A. His purpose in doing that, he said, was to make it clear that the transaction of the $136,000 receipt signed October 16 was a separate transaction, entirely distinct from the $26,000 receipt that I have just read, signed October 18.

Q. 138. Was that subsequent paper signed or delivered to you at the instance of yourself or solely at the instance of William Means? How was it?

A. Why, he delivered it to me—it was done at his instance. I had made the request on the 16th that the transactions be treated as separate transactions, and he signed the receipts as I have testified, dating the $136,000 receipt as of the 16th and the $26,000 as of the 18th, and executing them and signing them of that date, but returned in two days and executed the $26,000 receipt on October 18th, and had it witnessed and delivered it to me, with duplicate.

Q. 139. Just state what that is.

A. It is a paper signed by John Means and Margaret A. Means

and marked Exhibit 20, Ashland, Ky., May 17th, 1893, B. Perin, sp. ex.

Q. 140. At the time of the execution of the $26,000 receipt, of the 16th inst., as well as of the 18th inst., what was said, if anything, with reference to whether you and Mr. Means, as administrators, would pay the $26,000 to Margaret, John and Mrs. Adams?

A. When the payment to those individuals you have mentioned was suggested, the question arose with E. C. Means and myself as to whether the estate—whether William Means' share in the estate would be sufficient—would prove sufficient to pay both his indebtedness as represented by the $136,000 receipt and also the indebtedness as represented by the $26,000 receipt—whether it was sufficient to pay both of these. The estate inventoried, in round numbers,
$752,000, excluding real estate. That is, we had only to do
577 with the personal property as administrators. The estate we had to do with inventoried, in round numbers, $752,000. William Means' one-fifth interest in that would be, in round numbers, $150,000. This indebtedness of $136,000 to the estate with $26,000, in round numbers, to John Means, Mary A. Adams and Margaret Means, aggregated $162,000, $12,000 more than his share, as it appeared by the appraisement of the estate. We therefore, E. C. Means and myself, were reluctant to—at least I was reluctant, to enter into this arrangement, fearing that if we did so, that we would pay out more on William Means' account than he was entitled to.

Q. 141. What arrangement?

A. To pay to John Means, Margaret Means and Mary A. Adams, amounting in the aggregate to $26,000, therefore I said and E. C. Means said that we would not pay that sum of $26,000 to the three individuals named without a bond from them to us agreeing to refund any excess should there prove to be one, beyond William Means' share in the estate. In other words, fearing that we might realize less than the $162,000, we demanded a bond from John Means, Margaret Means and Mary A. Adams to save us from loss provided we paid them more than William Means was entitled to.

Q. 142. State whether or not this paper marked Exhibit 24, referred to by you, is the bond that was forwarded for that purpose for the signature of Margaret A. Means and John Means?

A. This is the bond that was drawn up by our attorney, Mr. John F. Hager, to be signed by John Means, Margaret A. Means and Mary A. Adams agreeing to refund the amount, if any, that should appear as an excess of William Means' share in the estate, and pay it back to the estate.

Q. 143. Well, it appears to be signed by John Means and Margaret A. Means. Do you know anything about the signatures—any conditions attached to those signatures, or objection, if so, state what?

A. It was signed by Margaret A. Means. I was informed, not by her—I was informed by Cook Means that she expressed disapproval of the scheme, that she did not want to receive—did not want to take part in the matter, and it was never signed, never completed. The bond was never completed. Mrs. Mary A. Adams never signed

it, and without her signature we felt that the bond was imcomplete and we were not justified in paying the money to them.

Q. 144. State what the paper now handed you is.

578 A. Paper signed by John Means and Margaret A. Means, October 18, 1890, marked Exhibit 21, Ashland, Ky., May 17, 1893, B. Perin, sp. ex.

Mr. ANDERSON: As this paper has already been introduced in evidence as Exhibit 20 of John Means' deposition for the defendants, it is now again offered but not copied.

Q. 145. Was that paper forwarded for the signature of John Means and Margaret Means at the same time that Exhibit 20 was forwarded?

A. It was. I think it was. I am not positive about that. It was forwarded by Mr. Hager, I suppose, and I suppose he forwarded it at that time. It was done at our request and I presume he forwarded both papers at the same time, and they both bear the same date.

Q. 146. It bears the signature of John Means and Margaret Means?

A. Yes, sir.

Q. 147. Do you know whether there was any objection of Margaret A. Means to having it used?

A. I understood from Cook Means that she made the same objection to that as to the one just before spoken of.

Mr. ANDERSON: We will offer this paper in evidence in this connection, but as it has been copied into the record as Exhibit 21 of John Means' deposition for defendants, it is not now copied.

Q. 148. After the 18th of October state whether you met William Means at your house or residence when there was anything said about returning to him the $26,000 receipt or receipts that he had signed; if so, state what it was.

A. Why, I offered the receipts to William Means—the $26,000 receipt and its duplicate, after that date—I can't say how long after that. I think it might have been a month—perhaps longer—and I told him that we could not pay out of his share of the estate the amount he owed Margaret A. Means, John Means and Mary A. Adams, and handed him back the receipts.

Q. 149. Well, what was done with them?

A. He left them on the corner of the mantelpiece.

Q. 150. Did you, on or about that time, see Evan Williams; if so, when and where?

A. I do not think I saw Evan Williams on or about that time.

Q. 151. Did you then, or near that time, or at any time, have any conversation with Evan Williams about that $26,000 receipt and the $136,000 receipt? I mean after the 16th of October.

579 A. I never did have any conversation with Evan Williams about those receipts after October 16th, after they were signed.

Q. 152. When William Means left those receipts on the mantel-

piece—that is, the $26,000 receipts—what did he say, if anything, why he left them there?

A. I cannot state the exact language he used, but my recollection is that he said in substance that he could not—I am not certain but what he took those receipts and brought them back and left them on the mantel-piece. I don't know whether he left them on the mantel-piece when I handed them to him, or whether he took them to Ironton and consulted with Evan Williams and then left them on the mantel-piece. But either at that time or a few days later he said that he could not take those receipts, and brought them back after seeing Williams. I think he said that his counsel advised him not to take them, and I think, for that reason, he did take those receipts and brought them back after seeing Williams. Anyway, he left them on the mantel-piece.

Q. 153. Did William Means then, or at any time, state to you that the signing of the $136,000 receipt and the $26,000 receipt were one transaction and that if you gave up one receipt you must give up both? Did he make any demand in any form for the $136,000 receipt? If so, state what he said.

A. I have no recollection of any such demand.

Q. 154. Was anything said upon that subject at that time or at any time after the 16th of October?

A. I have no recollection of anything being said by William Means on that subject at any time.

Q. 155. State whether William Means gave at that time, or at any other time, any other reason for not taking the $26,000 receipt than the one that you have above stated.

A. I cannot recall any other reason stated by him, and my impression is that he gave no reason except that his counsel said he should not take it back.

Q. 156. Did he then or at any time after the signing of the $136,000 receipt make any demand from you and Cook Means as administrators, or either of you, for $25,000 or any other sum?

A. He never demanded anything of me after signing those receipts—either $25,000 or any other sum.

Q. 157. State whether you were aware at the time of the signing on the 16th of October, when the receipts were signed, that
580 his wife was setting up any claim to his share of the estate; if so, what was the character of that claim which you learned she was about to assert?

A. At the time these two receipts were signed?

Q. 158. Yes, sir.

A. My understanding was, from what Mr. Baker said—Mr. Baker did the talking. He was the spokesman of the evening. He said that Will. wanted to give these receipts and that he wanted him to give them in order to pay his indebtedness to the estate and that he also wanted to pay his indebtedness to his sisters and brother. My ideas at that meeting—I have very little recollection of claims his wife made or whether she made any or whether she was expected to make any. I don't remember—don't have any recollection that his wife was making any claims. I knew that they were living

together and I did not know that she had commenced suit for divorce or anything of that kind and I did not know what she could base a claim on. I do not want to state that nothing was mentioned of that kind there, but if there was anything mentioned of that kind, about his wife and her claim, I don't recollect it now. Perhaps the reason I do not recall it was, that his wife has always been talking about lawsuits for the last dozen years and I have been getting so used to it that it don't make much impression on me when I hear them and it might have been mentioned then and if it had been it would have made no lasting impression on my mind and whether there was anything said at that time about her lawsuit or what she was intending to do, I don't remember.

Q. 159. Had you at that time heard of any claims that she or her children were setting up that she was the owner or that they were the owners of his share of the estate in any form? If so, state what you had heard.

A. I never heard at that time that she or her children were claiming any share in the estate of T. W. Means and I did not hear of any claim that she or her children had against the estate of T. W. Means until in the summer or fall of 1891, and then for the first time I heard of this trust under which this suit is brought.

Q. 160. After the $26,000 receipt you have referred to were left on the mantel-piece in your residence, what became of them?

A. Why, I suppose those receipts staid there and lay on the mantel-piece for months, and that receipt and the duplicate, I mean of the $26,000, and I don't know who removed them from the mantel-piece, but I found one of them in a drawer, I think, when we moved out of the house nearly two years later. I found
581 one of them in a table drawer and I don't know what became of the others. I think the other has been produced in this case by the complainants.

Q. 161. I will ask you to have the examiner identify the original and duplicate receipts for $26,240.79, signed on the 18th at the time you say he returned here after the 16th?

The paper is identified by marking it as follows: "T. M. A. dep'n, Ashland, Ky., May 19, '93. B. Perin, sp. ex. Signed by W. M. Oct. 18, '90."

Q. 162. Now I will ask you to have the examiner identify the duplicate of the $26,000 receipt, the date of which was changed from the 17th to the 18th, which was in fact signed on October 16th, that you have referred to.

Paper identified by marking it as follows: "T. M. A. dep'n, Ashland, Ky., May 19th, '93. B. Perin, sp. ex. Signed Oct. 16th by W. M."

Q. 163. You have said, in substance, that you never heard of the claim or trust now set up in this action on behalf of William Means' wife and family until the fall or summer of 1891. I will ask you if you ever heard of any claim or trust in behalf of William Means' wife and family or children at any time prior to that time?

A. I never did.

Q. 164. After the receipts for $26,000 were handed back to William Means by you and left by him on the mantel-piece as you have stated, what was the next thing that you learned with reference to that $26,000, if anything?

A. The next move on the part of William Means was to come here October 31st, 1890, here in Ashland, and present the papers that I have here in my hand and leave them with me. They were presented to me by William Means and I endorsed on each one of them: "Received notice Oct. 31, 1890, T. M. A." That endorsement I put on each one of the three notices.

Q. 165. In whose handwriting are those papers?

A. William Means'.

Q. 166. By whom are they signed?

A. By William Means. The endorsement on the back is in my handwriting.

Q. 167. Will you read one of those papers as a part of your deposition?

A. I will.

E. C. Means, Thomas M. Adams, executors of Thomas W. Means, dec'd.

GENTLEMEN: I hereby assign to Mary A. Adams sufficient
582 of my interest in the estate of Thomas W. Means, dec'd, to pay to her the sum of $1,650, advanced by her to me from time to time and for which I am indebted to her, and you are further ordered and directed to make a note and memorandum of this assignment.

You are further ordered and directed to pay to said Mary A. Adams, without further order or receipt upon my part, the sum of $1,650 as aforesaid out of the first distributable money of mine coming into your hands, without further order or receipt from me.

You are directed to take her receipt for me for so much money.

WILLIAM MEANS.

Ashland, Ky., Oct. 31, 1890.

My recollection is that he brought A. E. Lampton with him when he served these papers on me, but I cannot state that positively.

Q. 168. The one that you have read is to Mary A. Adams. There is another of the same date to John Means; is it a copy of the former except as to the amount and the name of John Means instead of Mary A. Adams?

A. It assigns to John Means, of the same tenor, a copy of the other, $8,478.38. In all other respects, except the name and amount, it is a copy of the one just read.

Q. 169. I will ask you if the one you now hold in your hand, to Margaret A. Means, is a copy of the one given to Mary A. Adams except as to amount and name of Margaret A. Means?

A. It is a copy with the exception of the name of Margaret A. Means substituted for Mary A. Adams and the amount to be paid, $16,112.46 in this one.

Mr. ANDERSON: We will offer these last two papers in evidence, but as they are copied, as has been said by the witness, except as to names and amounts, we will not have them copied into the record, but let the examiner identify all three of the papers.

Papers are marked "T. M. A. dep'n, Ashland, Ky., May 19, '93, B. Perin, sp. ex."

Q. 170. At the time that these three orders, assignments or receipts, whatever they may be called, were handed you by William Means, was anything said to him with reference to the manner in which they would be received, or the condition, if so, state what?

A. I don't recollect of making any remark to him whatever. He handed me these papers and I took them.

583 Q. 171. Well, did the parties named in these, Miss Means, John Means and Mrs. Adams, have any notice of these?

A. I presume they did. I did not remember certain notice.

Q. 172. Were they advised of the fact that you had received them?

A. I presume they were. I do not remember.

Q. 173. Who was acting at that time as agent for Mrs. Adams, if any one?

A. I was.

Q. 174. About her money affairs?

A. Yes, sir.

Q. 175. Collecting her claims?

A. Yes. He served copy of these papers also on Cook Means, and Cook represented his father and Margaret A. Means.

Adjourned to Saturday, May 20th, at 10 a. m.

SATURDAY, *May 20th*, 1893.

Present: The same as yesterday.

Q. 176. Have you any letters in your possession received by Mrs. Adams from William Means?

A. I have.

Q. 177. Have you one which refers in any way to his indebtedness to her that is set out in your answer of respondents?

A. I have.

Q. 178. What is the date of it?

A. May 26th, 1890.

Q. 179. Just read the same as a part of your deposition?

A.—

MAY 26TH, 1890.

MY DEAR GOOD SISTER: Your very satisfying letter received today. I fear the sale of lots on the 20th did not meet your anticipation, though I am sure the progress of the town will be forward and satisfactory in the end. I hope you will not fail to secure a good, healthy cottage in Craigville and go there, as the sea air is so beneficial to you. You are so dear to me I must insist on your taking the best care of your health, as well as for your own comfort and enjoyment. How I wish I could be with you. We get

along so nicely together. My patience is wearing out at the delay attending my *nolle*, which has been interfered with by the wolf Glidden and his allies. Mr. Jordan has a full understanding of this business and is correspondingly indignant. But he is pulling strings in every direction for my benefit, and has at his back such men as Richard Smith and Theodore Cook, who are sincere
584 friends. Evan Williams has suggested to Jordan a powerful influence to work on the judge which has been gladly adopted, and we hope for good results. Matters here have relapsed into their former condition, and the wolf is saying that the Ashland people have adopted the starting-out policy, etc., and I don't know what his next move will be. If there is something coming to me from the estate, I wish the heirs would ask John to place enough to the credit of yourself and Maggie to pay my debts to you. It would make me happier. Glidden is always claiming that he has the co-operation of Mr. David Sinton, who he seems to cultivate. I cannot understand how a Sinton or a Means can be influenced to co-operate with a Glidden, as I have already supposed that I inherited from them the idea that the Gliddens are a bad lot. We are to lose our colored man, Richard, who has been so close a friend to me. He has notified madam that he must leave at the end of the month. He has been so kind and true to me that I feel all broken up. He hates to leave me but feels that he cannot endure things here any longer. To be a friend to me is good cause to *me* damned in this quarter. The poor fellow is gentle, honest and faithful as well as pious, and no man in the community is more respected. He is also quiet and discreet, and his influence in counteracting the lies against me has had a wonderful effect in my favor. I do wish you and Maggie had such a faithful servant to whom everything can be trusted. He don't yet know where he will go, but will probably get into some good family in Springfield or Dayton. I will give him the best recommendation in my power, but how I should love to have him always with me! You cannot without being in my situation understand the grief I feel to lose him. You must always give my love to my darling Maggie and tell her how I long for a sweet by-and-by when we shall all be together again. Tell me all about our dear old father, and all yours and Maggie's affairs. Everything you write is full of interest to me. I will enclose this to Tom so that our postmistress cannot tell who I am writing to. I think madam asks her for this information. Give my love to Tom, and believe me my dear good sister always your loving brother

WILLIAM.

I suppose Pearl will soon be here. She has never said the unkind word to me, and has always spoken kindly and respectfully of her aunts.

W.

The foregoing question and answer, into which is incorporated the letter of William Means to his sister, Mrs. Adams, is ob-
585 jected to as irrelevant and incompetent and for the reason that Mrs. Adams is not a party to this suit, neither is Wil-

liam Means, and it cannot in any state of decree be competent to explain any issue in this case.

Letter identified by "Ashland, Ky., May 20, '93, B. Perin, sp. ex."

Q. 180. Have you a statement of the account of your mother amounting to $1,650, to repay which the assignment of the 31st of October, 1890, that has been put in evidence, was given?

A. I have.

Q. 181. Will you make the same a part of your deposition and mark the same Exhibit 24?

A. I will.

Objected to as being incompetent and irrelevant and on the same ground as the letter. Copy of account is as follows:

Wm. Means in account with Mrs. M. A. Adams.

1889.			
June	21.	To check for draft of First National Bank of Hyannis, Mass., on Boston to order of Gertrude E. Means	$75.
July	8.	" check for draft of First National Bank of Hyannis, Mass., on Boston for Pearl Means	30.
July	15.	" check on First National Bank of Hyannis, Mass., payable to order of Geo. F. Washburn	6.50
Sept.	2.	" cash for Pearl Means	70.
	14.	" cash paid Sam'l Pitcher, M. D.	5.
	30.	" cash paid Mrs. B. Coleman, dressmaker	19.52
	28.	" cash for traveling expenses of Gertrude and Patti Means to Yellow Springs and shopping expenses in New York	120.
Nov.	25.	" check for draft of Ashland Nat'l bank on Cincinnati	100.
1890.			
April	18.	To check on Ashland Nat'l bank	20.
May	15.	" check on Ashland Nat'l bank	30.
June	4.	" check on Ashland Nat'l bank	25.
Oct.	6.	" note of Wm. Means dated Aug. 25, 1887, 1 day	707.32
		Interest on above note at 6%	132.11
		" To part of M. A. Adams' expenses on trip to Europe with Wm. Means.	309.55
		Total.	$1,650.00

586 Q. 182. State whether or not William Means at the date of the 16th of October, 1890, was advised of the amount of this account of your mother against him, and where.

A. Yes, sir. He was advised of the amount.

Q. 183. Prior to the signing of the $26,000 receipt?

A. Prior to the signing of the $26,000 receipt.

Q. 184. Of course he was then prior to the giving of this assignment on the 31st of October?

A. Yes, sir. Prior to that also, of course.

Counsel for defendants now offered in evidence a duly certified copy of the record and decree in the case of Gertrude E. Means, Pearl C. Means, and Patti W. Means, a minor who sues by her next friend Martha E. C. Means, plaintiff-, against William Means, defendant, No. 8254 upon the docket in the court of common pleas in Greene county in the State of Ohio, and asks that the examiner mark the same Exhibit 25, and make the same a part of the record in this case.

This record is objected to as incompetent and irrelevant for the reason that none of the parties defendant to this action were parties to that action and because the judgment rendered therein cannot in the least affect these defendants for the reason that if it should be determined that this estate owes William Means or these trustees anything on account of William Means' interest in this estate, it makes no difference to them to whom they pay it, whether to William Means or to the trustees, and because they cannot now be heard in this action to plead as against the judgment of the Greene county common pleas court for fraud or any other reason. Copy of said record is as follows:

EXHIBIT 25.

GERTRUDE E. MEANS *et al.*
vs.
WILLIAM MEANS. } No. 8254.

Pleas held at the court-house, Xenia, Greene county, Ohio, on, to wit, the 22d day of August, A. D. 1891, it being at the May term, A. D. 1891, before the Honorable Horace L. Smith, one of the judges of the court of common pleas within and for the second judicial district of the State of Ohio.

Be it remembered that heretofore, to wit, on the 26th day of May, A. D. 1891, it being at the May term, A. D. 1891, came the plaintiff-, by John J. Glidden, H. P. Whitaker, Little and Spencer, their attorneys, and filed in the office of the clerk of the court of common pleas in and for Greene county and State of Ohio, their certain petition herein in the words and figures following, to wit:

587 STATE OF OHIO, }
Greene County. }

Court of Common Pleas.

GERTRUDE E. MEANS, PEARL C. MEANS, and PATTI W. Means, a Minor, Who Sues by Her Next Friend, Martha E. C. Means, Plaintiffs,
vs.
WILLIAM MEANS, Defendant. } Petition.

The plaintiffs say that on or about the — day of ——, A. D. 1890, the defendant, William Means, who is the father of the plaintiffs, and their mother, Martha E. C. Means, together with these plaintiffs, constituted the Means family at Yellow Springs, Ohio; that at that time there existed family differences both of a personal and property nature between said William Means and the other members of the family; that said William Means was financially embarrassed; that his creditors were threatening to enforce large claims against him, more than sufficient to consume his estate, which was thought to be extensive; that his father, Thomas W. Means, was then living, but was very aged and permanently incapacitated for business, as well as for mental exertion; that by his will, executed when in sound mind and body, then and still existing, he had devised to said William Means the one-fifth part of his estate, which was large; that the property belonging to said William Means was legally liable to his creditors, and no family settlement could be rightly made thereof or therefrom, and the expectancy in his father's estate was not such an interest as was liable to his creditors, or was cognizable by the law, except as a proper subject for a reasonable, equitable settlement, and that said William Means then, in consideration of the premises and of other good and meritorious considerations, agreed with these plaintiffs and their mother, Martha E. C. Means, that in settlement of their said family differences and in full satisfaction of the claims of plaintiffs and of Mrs. Martha E. C. Means, and as a reasonable and proper family arrangement and settlement in equity upon these plaintiffs, that he would convey by deed of trust to a trustee his interest in expectancy in said estate of his father, and with a covenant that upon his father's death he would execute all transfers, conveyances and further papers necessary to execute and
588 complete said settlement and effect the purpose of transferring to his said trustee full title to all of said interest upon the trust, that the same be for the support, education and maintenance of his said children, these plaintiffs, and the family.

The said Martha E. C. Means and these plaintiffs acquiesced in and agreed to said family arrangement and settlement, surrendered their said claims and performed this contract upon their part.

Prior to the execution of said trust deed the father, said Thomas W. Means, died and said will was duly probated and is now operative and in full force, and thereupon this defendant, William Means, refused to carry out said family arrangement, refused to make said

settlement and refused to execute said trust deed, and still so refuses.

On the other hand, these plaintiffs and the said Martha E. C. Means have complied and tendered compliance with all the matters and things to be done upon their part or by any of them in that behalf, and demanded the execution of said trust deed by the said William Means in fulfillment of said settlement, which was and is a just, equitable family arrangement and settlement.

Wherefore, plaintiff- prays that this court, by its decree, enforce specific performance of said family settlement and agreement, and require the said William Means to execute such deed of trust and other instruments as should be found necessary to completely execute and carry out said agreement and family settlement, or in default thereof that the decree of this court operate as such deed and conveyance and for all proper relief.

JOHN J. GLIDDEN,
H. P. WHITAKER,
LITTLE AND SPENCER,
Attorneys for Plaintiffs.

STATE OF OHIO, }
Greene County, } *ss:*

Gertrude E. Means, being first duly sworn, says she is one of the plaintiffs in the above case, and that she believes the statements in the foregoing pleadings are true.

GERTRUDE E. MEANS.

Sworn to before me and in my presence subscribed this 25th day of May, A. D. 1891.

THOMAS E. STEWART, *Mayor.* [SEAL.]

To the clerk:

Issue summons against the defendant to the sheriff of Greene county, endorse: equitable relief asked for returnable according to law

GLIDDEN AND WHITAKER.
LITTLE AND SPENCER.

589 Thereupon there was a summons issued herein in the words and figures following, to wit:

THE STATE OF OHIO, }
Greene County, } *ss:*

To the sheriff of said county, Greeting:

We command you to notify William Means that he has been sued by Gertrude E. Means, Pearl C. Means and Patti W. Means, a minor, who sues by her next friend, Martha E. C. Means, in the court of common pleas of Greene county, Ohio, and that unless he answer by the 27th day of June, A. D. 1891, the petition of the said plaintiffs against him, filed in the clerk's office of said court, such petition will be taken as true, and judgment rendered accordingly.

You will make due return of this summons on the 8th day of June, A. D. 1891.

Witness my hand and the seal of said court this 26th day of May, A. D. 1891.

[SEAL.] J. T. HAVERSTICK, *Clerk.*

And afterwards, to wit, on the 8th day of June, A. D. 1891, the aforesaid summons was returned, thus endorsed: Sheriff's return. The State of Ohio, Greene county, *ss.* Received this writ on the 29th day of May, A. D. 1891, at 10 o'clock a. m., and pursuant to its command, on the 4th day of June, A. D. 1891, I left a true copy hereof, with all the endorsements thereon, at the usual place of residence of said William Means. William Dodds, sheriff of Greene county, Ohio.

And afterwards, to wit, on the 22nd day of August, A. D. 1891, this cause having been duly assigned for trial, this day came the plaintiffs and the said M. E. C. Means, who, on her motion, is made a party herein, and consents to and confirms the allegations of the petition, and thereupon this cause came on to be heard upon the petition, the evidence and argument of counsel, and the court, being fully advised in the premises, finds that the facts all and singular set forth in said petition are true, and that the said Thomas W. Means died testate, having left said will, on the — day of June, 1890, leaving an estate amounting to nearly one million of dollars, consisting almost exclusively of personal property.

It is therefore adjudged and decreed that the defendant, William Means, within 30 days from the entry of this decree, by a good and sufficient deed of conveyance, convey, transfer and set over all his interest of every kind—real, personal and mixed—in said
590 estate of the said Thomas W. Means, deceased, whether coming to him, said William Means, as devisee, or heir-at-law, except as hereinafter provided, to B. R. Cowen, Evan F. Williams and A. S. Frazer, trustees in trust, and upon the trust they take possession of all of said property and convert it into money, and hold and invest the same upon security such as is required of a guardian under the laws of Ohio, being hereby vested with all the authority and powers necessary or appropriate for such purpose, and that they apply the net increase thereof and so much of the principal as may be necessary to the reasonable support of the family of William Means, including himself, the plaintiffs and their said mother: provided, that upon agreement in writing of all the parties as to distribution of said trust funds the trustees shall execute such agreement.

Said trust shall continue during the lifetime of the said William Means unless all of said beneficiaries agree in writing to an earlier termination thereof.

And any agreement in this behalf which they shall so make shall be respected and carried out by the said trustees.

The said conveyance shall include all the interest of the said William Means in the estate of the said Thomas W. Means, deceased, whether by will or inheritance, except the household goods, furniture and personal property mentioned in item 3 of said will.

Upon the termination of this trust said property, or so much thereof as remains undisposed of by agreement as aforesaid, shall be divided equally between the plaintiffs or their legal representatives, share and share alike.

In default of the execution of such conveyance of the said William Means, within the time herein specified, then and in that event this decree shall operate as and have the force and effect of such conveyance.

Said trustee shall each give bond to the State of Ohio, for the benefit of whom it may concern, in the sum of $10,000.00, with sureties to the satisfaction of the clerk of the court, conditioned according to law, for the faithful performance of his trust.

Upon the application of any party in interest, this court, or a judge thereof, at chambers, may at any time require a new or additional bond of said trustees or either of them.

They shall report their doings to this court once every year, and whenever the court, on application of any party in interest, shall require them to do so.

In the event of either or any of said trustees failing to
591 qualify by giving the required bond within 30 days from the entry of this decree, the other trustees or trustee named who shall so qualify shall execute this trust.

It is adjudged and decreed that the defendant, William Means, pay the costs of this action, taxed at $—.

Q. 184. Mr. Adams, have you any other letter or letters from William Means to your mother, Mrs. Mary A. Adams, in which he refers to this action No. 8254, the record of which has just been put in evidence? If so, will you please produce it?

A. I have two letters. The first one is a letter from William Means to Mary A. Adams dated Magnetic City, North Carolina, June 15th, 1891.

Q. 185. Will you read the same as a part of your deposition?

A.—

MAGNETIC CITY, N. C., *June* 15, 1891.

MY DEAR SISTER: I arrived here on the 13th and found your good letter awaiting me. It delighted me to get it, as I was much troubled about you, and you can imagine my feelings, when anxious about the best and dearest friend in the world. The sensational slip from the Xenia Gazette which you enclosed was no surprise, as I had already been informed of the petition filed in Greene county, both by Col. Williams and by two friends in Yellow Springs. You have probably learned through Col. Williams by this time that the petition is false as I have never heard or thought of a trust deed before father's death, and only through Col. W. afterwards, who told me what the Glidden gang wanted, and which we promptly refused to make. The whole scheme is now to find some method of attacking the estate, and to raise the devil generally. I am right here under the shadow of Roan mountain where the days are warm and the air pure and bracing and the night deliciously cool. Prof. Wetherby lives in a large hewed-log house, with a wide alley hall

in the center, and I have a room upstairs with two beds, all to myself. One of his daughters plays well on the piano, and we have a library of well-selected books. We have big wood fires when it is chilly, and a great fish pond full of trout and other fish. The scenery is simply grand, and I wish you were here to enjoy this pure atmosphere and the glorious surroundings. I am treated like a lord by everybody and the most perfect kindness by this family.

The hotel on the mountain "Cloudland" is a great success,
592 and the proprietor, a Mr. Ragsdale, of Chattanooga, a warm friend of mine. The old doctor is up in Virginia sampling the gold mine and I have not heard from him recently. Write me as often as you can and believe me my dear sister, always your loving brother,

WILLIAM MEANS.

I don't think the Greene County court has jurisdiction as I am not a resident of that part of the country or the State.

W. M.

It is maybe well not to mention just where I am. Just say I am in the South.

This letter is objected to for the same reasons as the former letter introduced and read by the witness.

Q. 186. Will you permit the examiner to identify it?
A. I will.

The letter is marked Ashland, Ky., May 20, '93. B. Perin, sp. ex.

Q. 187. Have you any other letter from William Means to Mrs. Mary A. Adams?
A. I have.
Q. 188. Produce it and read the same as a part of your deposition.
A.—

MAGNETIC CITY, N. C., *September* 28, 1891.

MY DEAR SISTER: Your good letter of 24th, with copy of Xenia decree, was received on the 26th. I am quite familiar with the status up there, but have not mentioned the subject in my letters, because I thought you did not care to be troubled with these matters. You have a letter from me in June last concerning the petition filed against me in the Greene County court, and I have since learned through an attorney I have in Yellow Springs, that it was based entirely on the testimony of Glidden & Whitaker, who evidently swore to the best advantage. Col. Williams had sent me a copy of the petition before I wrote you, and lately has sent me a copy of the decree. My attorney at Yellow Springs is a loyal friend right at the seat of war, and keeps me well informed. He also keeps my friends together, and as the Enquirer correspondent he has done good service in shutting off all sensational articles against us. Madame don't like him. It looks now as though the war is about to be on in earnest, and there will be trouble for somebody. It is my information that Mr. Pogue, the bank agent, is allied with

the Glidden gang, and he has associated with him Judge Avery, one of the ablest jurists at the Cincinnati bar, so there will be no child's play in the coming struggle. The executors will have a desperate woman, who is not hampered by any fine sensibili-
593 ties to fight, before a jury in a Federal court, and she will have the press on her side.

Believing that I was the key to the situation, I placed myself suddenly beyond the jurisdiction of their courts. This was without the advice of attorneys, but they approved, and there is no doubt it made the situation awkward for somebody, as several attempts have been made to induce me to come to Cincinnati or Covington, ostensibly for depositions in cases in which I was interested. I trust that you and Maggie are enjoying good health, and are happy and comfortable. There is nothing so important for you now as to be taking the best care of yourselves, and go along quietly and serenely while the war is going on elsewhere, as it seems it cannot be avoided. Love to Maggie, and believe me,

Your loving brother, WILLIAM MEANS.

Produced for identification and marked, "Ashland, Ky., May 20, '93. B. Perin, sp. ex."

Objected to for the same reason.

Q. 189. Have you any letter in your possession by William Means to Thomas W. Means? If so, will you produce it and read the same as a part of your deposition?

Objected to.

A. I have.

(Letter-head of Grand hotel. Henry C. Gilmore & Company.)

CINCINNATI, *February* 23, 1888.

Thos. W. Means, Esq., Ashland, Ky.

DEAR SIR: Please protect my notes given to and payable at the Ashland National bank, Ashland, Kentucky, as follows: One maturing February 18–21, 1888, for $6,000, and one maturing March 13–16, 1888, for $9,000, for the payment of which, said bank holds as collateral security 220 shares stock in the Met. Nat'l bank, Cincinnati, which you are hereby authorized to hold, sell or collect, at any place, either at public or private sale, at my expense, without advertising the same or otherwise giving me any notice.

Yours very truly, WILLIAM MEANS.

Q. 201. State whether or not Mr. John Means, Margaret A. Means, Mary A. Adams now claim the right to have the sums due them, respectively, individually, from William Means, paid to them out of the estate of Thomas W. Means, by yourself and E. C.
594 Means, as administrators with the will annexed, provided there is sufficient over and above the $136,035.75 to do so.

A. I have not talked with John Means about it for a long time.

Q. 202. You are talking about the present time, but I mean at the time the answer was filed.

A. Yes, sir.

Q. 203. Look at the paper now handed you and state what it is.

A. This is a letter dated Ironton, Ohio, October 18, 1890, addressed, "My Dear Mr. Hager," and signed Evan F. Williams. It is identified by the following marks, "Cincinnati, April 6, '93. B. Perin, sp. ex."

Q. 204. I will ask you to look at the body of that letter and state in whose handwriting it is.

A. The body of the letter—well, I can only state my impression about it.

Q. 205. That is what I ask.

A. I think it is in the handwriting of William Means, all the letter except the "most truly yours" and the Evan F. Williams at the bottom—the signature at the bottom and the "most truly yours."

Question objected to as irrelevant and incompetent and because the foundation to the question has not been laid.

Q. 206. It is on how many sheets?

A. Three sheets.

Q. 207. Look at the paper now handed you and state what it is.

A. This is a paper dated Ashland, Ky., July 28, 1890.

Q. 208. Will you read the same as a part of your deposition?

A. It reads as follows:

ASHLAND, KY., *July* 28, 1890.

Mr. E. Cook Means and Thomas M. Adams.

GENTLEMEN: Mr. William Means has after due consideration with full knowledge as to his legal rights notified you that he revoked a certain paper-writing dated June 16, 1890, and that he withdrew all authority given by such paper.

Notwithstanding this revocation we desire to say on behalf of William Means that he is ready and willing at any time to come to a full and amicable consideration and adjustment of his re-
595 lations to the estate of his father, and either he or we as his counsel will be pleased to confer with you on the subject at any time.

Yours very truly, JORDAN & JORDAN.
EVAN F. WILLIAMS.

The paper is offered in evidence and identified by marking it "Ashland, Ky., May 20, '93. B. Perin, sp. ex."

Q. 209. At what date did you receive this letter of Jordan & Jordan and Evan F. Williams to Mr. Means and yourself?

A. On or about July 28, 1890, after we had been appointed and qualified as administrators, with the will annexed, of the estate of Thomas W. Means.

Q. 210. Some balance-sheets from the books of Thomas W. Means cover a period of several years, beginning with 1882, being Exhibits 12 to 18 of John Means' deposition in defense, have been introduced

in evidence. State whether the same, or copies of same, were delivered to Thomas W. Means about the time they were made.

A. I know that John Means frequently made trial balances from the book of his father, the books we have had in evidence here, of Thomas W. Means, and submitted them to his father during this period. I know that.

Question and answer objected to as incompetent and irrelevant and having nothing to do with the issues in this case.

Q. 211. State whether or not you have made any trial balances from those books at any time; if so, when?

A. I made one in 1882 and I think perhaps one or more besides.

Question and answer objected to for the same reason.

Q. 212. Before or since that time?

A. About that date.

Q. 213. State whether they, or copies of the same, were delivered to Thomas W. Means.

A. Yes. I know the 1882 inventory that I speak of, I showed to him, and if I took any others off, I took them off for that purpose to show them to him so that he could have a summary of the accounts for reference.

Objected to for the same reason.

596 Q. 220. Mr. Adams, I understand that after the signing of the two receipts on the 16th of October, 1890, the notes of William Means to Thomas W. Means in the hands of the executors or administrators, amounting in the aggregate to something over $280,000, were returned to William Means after the signing of those receipts—returned by the administrators; is that the fact?

A. I returned the notes to William Means after the signing of those receipts.

Q. 221. At what time?

A. The next time I saw him. He went away that night and the notes were locked up in the bank and it was impossible to get them, but the first time I saw him afterwards I handed him the notes.

Q. 223. You have stated that the interest was calculated upon the notes up to the 6th of October. State whether the calculation was correct.

A. The calculations were correct as far as I examined. The calculations were made by E. E. Seaton, and I went over a great deal of his work and as far as I went, I found it correct. I went over the most of his work.

Q. 224. Was the time that you handed back the $26,000 receipt to William Means prior or subsequent to the 31st of October?

A. It was between October 16th and October 31st. I would say it was between October 18th and October 31st.

Q. 225. Mr. Williams has testified in substance that William Means told him that he had talked to all the relatives up here at Ashland about the family matters and the claims of the family. I

will ask you if any such conversation was had by William Means with you at any time prior to the 16th of October, 1890, when these receipts were signed?

A. No, he did not.

Question objected to because it is in the nature of hearsay. What William Means said to Evan Williams about his talks with the family is incompetent.

Q. 226. Mr. Williams has testified that at the time your grandfather was lying in the house in his coffin he notified William Means in the parlor or room where you were all sitting that Mr. Whitaker was insisting upon a settlement of the claims of the wife and children and to their interest in this estate, in his share of the estate. I will ask you if any such notice as that was ever referred to or mentioned at that time or any other time by Williams to William Means or any other person in your presence; if so, state what was said and done?

A. There was no notice of that kind made in my presence
597 at that time by Evan Williams or prior to that time, or prior to the signing of this $136,000 and $26,000 receipts.

Q. 227. Well, has there been any such notice by Williams in your presence at any time since then?

A. Except in his deposition in this case, I never heard Williams say anything about it.

Q. 228. Mr. Williams has testified, as I understand it, in effect, that the executors, meaning yourself and E. C. Means as such, of your grandfather, Thomas W. Means, were to hold the $26,000 owing to John Means, Margaret Means and Mary A. Adams as trustees for William Means. What is the fact about that?

A. There never was such an arrangement or understanding to that effect on the part of myself individually or on the part of myself in conjunction with E. C. Means.

Question objected to because it refers to what Mr. Williams testified in substance as the attorney asking a question understands it, without referring the witness to the question itself, and because Mr. Williams did not testify to any such state of case.

Q. 229. A letter, I believe, of William Means to some member of his family has been offered in evidence by the complainants in which there is a statement to the effect that Mrs. Adams could not get her money, or what she wanted of her money for her use, during certain portion of the year 1889, I believe—1888 or '89, whatever the case may be. I will ask you what was the fact during that period as to Mrs. Adams' funds? Who had control of them, and how was it as to her being able to get her money?

A. I had charge of her business affairs at that time, and always promptly remitted her any sums of money she asked for.

Question and answer objected to, because the letter, if such one is in the testimony, shows for itself, and the court will consider it according to its contents and context.

Q. 230. You have read the letter, have you, in evidence, or portions of it?

A. I don't remember; my recollection is not clear about that. I heard it discussed.

Q. 231. Did ever William Means tell you, or any other person in your presence, that the madam and children wanted a settlement of his share in the estate? That is, wanted to have his share in the estate settled upon them, or words to that effect; if so, state what he said?

A. He never said that to me at any time.

Q. 232. Did he ever state that in effect?

598 A. Not in effect, either.

Q. 233. Did he ever state it in your presence?

A. Never in my presence or hearing.

Q. 234. You were with your grandfather, as I understand, a large portion of the time of your whole lifetime, and a great deal in the latter part of his lifetime?

A. Yes, that is true.

Q. 235. Did he ever talk to you to the effect that he was going to hold back a portion of his estate to provide for an unfortunate child in the event of him being unfortunate or any one being unfortunate?

A. He never made that statement to me or in my presence or hearing.

Q. 236. Was it his habit or not, to talk to persons outside of the family, or with whom he was consulting for information about his business matters?

A. I do not think I ever heard him make any statement about what he intended to do with his estate to outsiders.

Q. 237. I am talking about business matters generally, when he was not asking for information or consulting. What was his habit about talking about his business to people?

A. No, not about the details of his business.

Q. 238. Well, you say he did not talk about the details? Did he talk generally to people about his business at all—about what he was going to do?

A. I have no recollection of his telling people what he was going to do in business matters. I have heard him say such a concern made money and such a concern did not make money, and say that to acquaintances of his.

Questions and answers in regard to conversations between witness and Thomas W. Means objected to as irrelevant and incompetent.

Q. 239. Mr. Williams has testified that John Means had almost exclusive control of his father's business and matters from 1878 to 1882, and Thomas Means did not transact any important business without consulting and acting under the advice of John Means. State whether or not it is a fact that Thomas W. Means, during that period, from 1878 to 1882, did or did not transact, or what the fact is as to whether he did or did not transact business without consulting John Means?

Question objected to because it is leading and because the foundation for the witness' knowledge as to what Thomas W. Means
599 and John Means did or advised about. He has not testified that he knows anything about what did take place.

A. Well, Thomas W. Means transacted important business between '78 and '82, and I do not know that he consulted John Means about it.

Q. 240. What was the size of the farm on which his residence was situated near Hanging Rock, in which he lived just prior to his moving to Ashland, during the period referred to?

A. He had a farm of three hundred acres, in round numbers.

Q. 241. How much of it was bottom land under cultivation?

A. About half of it was bottom land under cultivation—about one hundred and fifty acres.

Q. 242. Who conducted and managed and looked after the farming business up to the time that he came to Ashland?

A. He had it rented. A man by the name of Lawrence Smith rented it, and when he died his widow, Mrs. Lawrence Smith.

Q. 243. Who attended to the renting and looking after the farm?

A. Thomas W. Means made the contracts and kept the accounts on his books of the payments made him, and charged the amount of rent on his books.

Q. 243. Who did the collecting and receiving?

A. Thomas W. Means.

Q. 244. Was it rented for cash or for shares?

A. It was rented for shares, I believe.

Q. 245. Who attended to receiving his share and disposing of it, &c.?

A. Why, he attended to it—Thomas W. Means.

Q. 246. What books do you refer to that he kept his accounts in? Not these books that have been referred to heretofore?

A. No. They were single entry books that he kept in his own house at Hanging Rock.

Questions and answers referring to Thomas W. Means' farming business objected to as irrelevant and incompetent and having nothing to do with the issues in this case.

Q. 247. What was the amount of bank stock, of the capital stock of the Second National Bank of Ironton, Ohio, owned by Thomas W. Means at the time of his death and for quite a time prior to that?

A. He owned at the time of his death and for some time
600 prior thereto, $28,900 worth, par value; that is 289 shares. That is the largest amount he ever owned, $28,900 worth.

Q. 248. What was the entire capital stock?

A. The entire capital stock at the time of his death was $250,000, and it was made that in '72. Before that it was a hundred thousand, and the original capital, I believe, was about 60,000, and in 1872 it was raised from $100,000 to 250,000. The most he ever owned was 289 shares.

Q. 249. What was the office, if any, he held during that period?

A. He was president and director from its organization. At all events he was president until January, 1884, when they elected another man. He was director, of course.

Q. 250. Did he attend the meetings of its directors from time to time?

A. He was very regular in his attendance at the weekly meetings. He lived two miles and a half from the bank. He used to drive up once a week. He seldom missed a meeting.

Q. 251. Were you ever present at those meetings?

A. I never was.

The questions and answers relating to Thomas W. Means' connection with the Second National Bank of Ironton, are objected to as incompetent and irrelevant, having nothing to do with the issues in this case.

Q. 252. It has been shown in the evidence by Williams and others that Mr. Thomas W. Means, when he would go about in his buggy for a number of years prior to coming here, frequently had some one attending him. State whether or not you attended him a part of the time?

A. I frequently drove the horse for him in his phaeton in his drive to Ironton and Ashland and he frequently drove alone prior to his coming to Ashland.

Q. 253. Well, state what was the occasion or cause of your driving, when he did drive, or others so far as you know?

A. Why, he was an old man and would rather have somebody else drive than drive himself, I suppose.

A. 254. What was his mental condition from the year '74 up to the time that he came to Ashland in '82? What impression was made upon your mind at the time as to his mental condition?

A. Why, he was thoroughly sound mentally; was at that time looking after his various business ventures and attending the meetings of stockholders in the companies he was interested in,
601 and serving as director in the Second National bank, and directing the affairs of Means, Kyle & Company, as its president—president of the Second National bank—leaving the details of those concerns to the men who were employed to look after them.

Q. 255. Well, what was his habit as to details of his business from the time you can remember?

A. Why, Mr. Willard, the manager of Means, Kyle & Co., would consult him about the business of that company, and I have already stated that he was an active director of the Second National bank, he signed their notes for them, as president—their bank notes that they issued. He used to take the notes with him down to his home at Hanging Rock and sign them there and bring them back.

Q. 256. Well, how long did he continue that, carrying his notes down to his house and signing them and bring them back to the bank?

A. I think until he moved to Ashland.

Questions and answers as to what Mr. Means did in regard to the conduct of his business in the Second National bank, etc., *is* objected to as incompetent and irrelevant, and because the foundation for asking the question- has not been laid, the witness not having stated that he personally knew of these things.

(Witness continues:) During the period you refer to he sold a large block of stock in the Iron Railroad Company. The amount he was to receive for it was something over a hundred thousand dollars. He received that money and also money that was paid for the stock of Margaret Means and Mary A. Adams and James Means in the same company, and afterwards settled with them. He was a director in the Iron Railroad Company at that time and attended its meetings very regularly. I was also a director and can say from my own knowledge that he took an active part in the meetings.

Q. 257. During this period, state whether his conduct relative to his business affairs was rational or irrational?

A. I never knew him to do anything or say anything that was irrational at that period.

Q. 258. Now, after he came to Ashland, state if there was any, or what, business transactions in a general way he took part in, if any, that you know of?

A. I went to Montana in '82, the year he moved to Ashland, and remained there until late in the year '85, until the fall or winter of '85.

602 Q. 259. Did he have any business transactions after that, that you know of?

A. He used to pay his bills for—pay the girls that worked for him, and the hired man. He used to go down to the lower end of town and pay for the feed he got for his cow and chickens, and got the bills receipted and paid the money.

Q. 260. He attended to paying for his household expenses?

A. He did.

Q. 261. State whether he ordered things for the house or not—coal and food and things of that kind?

A. I think he did. I think he ordered coal. I remember he used to go down and buy canned goods by the case. He would get them cheaper that way, canned vegetables and canned tomatoes and canned corn, and buy sugar by the barrel, and come down and pay the bills and bargain for the goods and he would get prices at different houses and he would go where he could buy them the cheapest.

Q. 262. Up to how late a time did he continue that, as far as you know?

A. Until his sight failed him; until he became blind.

Q. 263. What year?

A. He became blind about two years before his death. That is the way I fix that.

Q. 264. There has been a portion of a letter introduced by complainants, written by your mother, I believe, to Mrs. Means, William Means' wife, referring to your grandfather going to the bed and feeling of it, etc., at the time Charles Campbell was up here. Were you about Ashland at that time?

A. I was about Ashland at the time he used to go to his bed, at the time he got so that he could not see very well. I do not remember the date that you refer to.

Q. 265. State what was his habit about that, if there were ladies about?

A. Why, he used to go to his bed to get his chamber to urinate in. He went very frequently. He was an old man and he went very frequently to his chamber for that purpose.

Q. 266. If there were any ladies about, what reason would he give for going, if any?

A. He would say he was going to feel his bed to see if it was there and see if he could locate it.

Q. 267. A letter signed by Mr. Evan F. Williams to Mr. Hager, introduced in evidence, refers to the fact therein stated that
603 William Means had been to Ashland; "not being able to obtain the money in Ashland coming to me." I will ask you whether William Means on the 18th of October, 1890, or about that date, came to you for any money; if so, what money?

A. Why, there were some dividends paid on the Metropolitan Bank stock that William Means had transferred to John Means and to Thomas W. Means. There were two hundred and twenty shares transferred to Thomas W. Means. That is, I mean the transfer was on the certificate. I did not mean it was on the books of the bank. It was on the back of the certificate. The transfer to Thomas W. Means was 220 shares and to John Means 223 shares. There were some dividends made on this stock that E. C. Means and I did not collect because we did not understand the matter at that time. I could not say without looking at the stock whether it was transferred in blank or on the back of the stock. I think that these dividends amounted to about $800 or $1,200. We afterwards learned that this stock was pledged as collateral by William Means on his notes executed to Thomas W. Means, and therefore that the dividends, after the notes were surrendered to William Means, rightfully belonged to William Means. If he came to me for any money it must have been this money. There was no other claim made by him for money at that time, and that is the only money at that time that was due him.

Question and answer objected to because it is leading and because the witness in his answers does not state that he came to him for any money, but if he did, it must have been this money, and the answer is not responsive to the question.

Q. 268. I will ask you, Mr. Adams, if you have any recollection of him making any claim at or about that time for any money. Just answer yes or no, if you can?

A. I don't think he made any claim directly to me for any money. I have learned this through my mother, that William Means thought that we ought to pay these dividends. I think I got that information from my mother. I don't think he made any demand on me for that money. I know he made no demand on

me for any other money and I am quite positive that he did not demand of me that money. I have no recollection of it.

That portion of the answer which refers to any information that he got from his mother is objected to as hearsay.

Q. 269. Referring to the $26,000 in answer to X Q. 604, Mr.
604 Williams, among other things, says as follows: "I do not wish to bind Mrs. Adams with this matter because that was a matter that came up afterwards so far as she was individually concerned. But so far as the amount was concerned, if she did not pay it, John Means and Margaret Means were to get it from the administrators and pay it over. That was our understanding, and as I told you all those details that you are talking about were not discussed." I will ask if at the time the $136,000 and $26,000 receipts were signed, or prior thereto, if any such arrangement or understanding with reference to the debt that William Means owed your mother was made or entered into as I have just quoted from Mr. Williams' answer; if so, state what it was?

A. There was no such promise to pay back that money to William Means on the part of mother or on the part of myself representing her, or on the part of myself as administrator. I refer to the $26,000, or any part of the $26,000.

Q. 270. At the time that William Means wanted you to take back or return the $26,000 receipt that you had handed him, who, if any one, was present with him?

A. No, one; just he and I were present.

Q. 271. I will ask you if Williams was present?

A. He was not.

Q. 272. Was Mr. Williams at your residence that day?

A. No; not to my knowledge.

Q. 273. On the 18th of October or about that date, did William Means make any complaint to you, or to any one in your presence, that he had paid to the estate more than was due the estate; if so, state what he said?

A. I have no recollection of his making that statement to me at that time. He might have made it to mother as I suggested before about these dividends of the Metropolitan National bank.

So much of the answer as relates to any statement to witness' mother is objected to as hearsay.

Q. 274. How did it happen that at that time you delivered the note to William Means after the receipts were signed, without delivering also the certificates of Metropolitan Bank stock?

A. They were not thought of. At that time it was an omission as to part of them, part transfer-ed to Thomas W. Means. There was part transferred to John Means that we had a question about, whether it belonged to John Means or to T. W. Means. At least I had a question about it. I don't know how it was with E. C. Means.

605 Q. 275. Up to how late a period, Mr. Adams, did your grandfather retain his mental faculties so that he was able to

transact business, according to the impression made upon your mind at the time—his ability to transact business according to a fixed purpose of his own, if he had any?

A. Well, I would say within a year of his death, and possibly a less time.

Q. 276. More than a year of his death, or less, or nearer his death?

A. Say within a year of his death, or less. I do not mean to say that he was incompetent at a later period to transact business—say ten months of his death.

Q. 277. I will ask you up to how late a period could he read, and did he read, and what he read.

A. Well, he read the newspaper as long as he could see, the daily Cincinnati Commercial Gazette, and I remember he read Grant's Memoirs. He read both volumes, loaned to him by John Means, and was very much interested in them.

He also, after he became blind and while his eyesight was failing, I read to him the daily paper, the Cincinnati Commercial Gazette and also the Iron Register, the weekly paper, and we read to him for seldom less than an hour each paper, and often each paper I would read an hour and a half. We never timed it, but I suppose it would average an hour and a half a day, and on Sundays I would read the Bible and on week days the papers. He generally requested me to read to him the market report and the price of wheat and corn, and the stage of the river. This was after he was blind. On Sundays he would want me to read the New Testament in preference with the Old Testament.

Q. 281. I will ask you if during the periods that he read, and that you read to him, he commented upon the reading, or the subject-matter, and if so, whether his comments were rational or irrational.

A. Yes, sir; he commented on the subject-matter of my reading and all his comments were rational.

Objected to because it is leading.

Recess until 2 o'clock.

Q. 287. I do not know whether I have asked you heretofore or not, as to the influence of John Means over Thomas W. Means. State, if you recollect, any instance in which he did not influence him, where he would be expected to.

606 A. John Means for many years has been an attendant at and liberal supporter of the Presbyterian church at Ashland. He and his wife contributed both very generously to the support of that church and its pastor. Grandfather when he come to Ashland in 1882, attended that church and was a warm friend of its pastor.

Q. 288. Who was its pastor?

A. Rev. W. C. Condit. Some time after T. W. Means removed to Ashland, John Means and his wife separated from that church owing to something they did not like about certain members of the church,

and grandfather T. W. Means would very frequently talk thereafter, talk with John Means about the Presbyterian church and ask him why he left it. Grandfather never did leave it, but always remained faithful to Mr. Condit and that church and John Means' influence was never such that he would get him to quit that church and Thomas W. Means continued to contribute to the support of that church long after John Means left it and up to within a short time of his death.

Q. 289. When you say John could not get his father to leave—did he make any effort to get him to leave, that you know of?

A. I know that he used to, in his visits to grandfather's house—he used to. They used to discuss the matter and Thomas W. Means knew that John Means had quit the church.

Q. 290. I will ask you if you recollect of John Means consulting Thomas W. Means about the business of Thomas W. Means, from time to time, and if so, up to what period?

A. John Means used frequently to come in to call on his father and talk with him about business—about investments—until after he was blind, a long time, I could not say how long.

— 291. I believe I have asked you heretofore, but I will ask it again whether William Means, when he handed you back the $26,000 receipt, after you had handed it to him, at any time thereabouts, demanded the return of the $136,000 receipt. If you have refreshed your recollection upon that point, I would like to have an answer.

A. Neither William Means nor any one representing William Means ever demanded from me the return of that $136,000 receipt at any time.

Q. 292. Have you copies of the notes that aggregate $280,000 or thereabout that were surerndered by you or Cook Means, or both, to William Means after the signing of the $136,000 receipt?

607 A. I have accurate copies with all the endorsements thereon. They were copied by Cook Means, and then I went over all the copies and compared them with the notes and marked each one "copy," after I had compared it with the original, and I will now state that these are accurate copies that I now hold in my hand—accurate copies of the notes that were surrendered to William Means. Each note has the word "copy" written on it twice—once when I compared it and once when Cook Means compared them, with the exception of one or two notes that Lewis Anderson copied, but all the notes were by me compared with the original notes and found to be accurate copies.

Q. 293. And the endorsements on them?

A. And the endorsements on them.

Q. 294. And the agreement that was attached to some of them; are those agreements accurate copies of the agreements attached to the originals?

A. They are.

Q. 295. Will you let the examiner identify those copies?

A. I will.

Copies identified with date, and signature of the examiner.

Q. 296. Have you compared these with the copies that are attached and filed with the deposition of John Means in chief for complainants as Exhibit 23? If so, are the ones that purport to be copies filed with the deposition of John Means correct copies of the notes surrendered to William Means that were held by the estate of Thomas W. Means, or the administrators of Thomas W. Means?

A. They are.

Q. 297. There is an entry, I believe, on the $125,000 note of a credit that I believe Mr. John Means testified he did not make. I will ask you if you know who did make it and from what date it was made?

A. I made an entry on the back of the $125,000 note dated April 17th, 1890; that is, I made the endorsement on the back of the note for $443. I made it in my handwriting and I took it from the books of Thomas W. Means, Journal B, page 206, because I could not find that it had been credited on the notes of William Means.

Q. 298. In whose handwriting was the original entry on the journal?

A. It was in the handwriting of W. B. Seaton. I believe it is his handwriting.

Q. 299. What is the date of the note on the back?

608 A. April 17th, 1890.

Cross examination by Mr. WHITAKER:

X Q. 300. Mr. Adams, you are a grandson of Thomas W. Means, I believe.

A. Yes, sir.

X Q. 301. The son of Mrs. Mary A. Adams?

A. Yes, sir.

X Q. 302. And she is the daughter of Thomas W. Means?

A. She is.

X Q. 307. At your mother's death, if you should survive her you are her only heir, I believe, or would be?

A. Would be; yes, sir.

X Q. 308. You have stated, I believe, that you had a meeting with William Means at the Ashland Improvement Company office?

A. October 4th, 1890.

X Q. 309. How was that meeting brought about, if you know? What occasioned it? Who was instrumental in bringing it about?

A. I don't remember who told me to come to that meeting.

X Q. 310. Did you know anything about it until the day the meeting was had?

A. I don't think I did.

X Q. 311. Was William Means staying here at that time in Ashland, or where was he? Where was his home or stopping place?

A. Well, I don't remember whether he was staying here in Ashland or not.

X Q. 312. When was the next meeting, Mr. Adams?

A. The next time I saw William Means was October 16th, I think. I don't think I saw him between October 4th and October 16th.

X Q. 313. That was the meeting at the house that night?

A. Yes, sir.

X Q. 314. That Mr. Baker and Mr. Hager came there?

A. At the house; yes, sir.

X Q. 315. Had you any knowledge of his coming before he did come there that night?

A. I don't think I knew anything about it until he came.

X Q. 316. Don't you know as a matter of fact that he had been in town a day or two previous to October 16th, at least all that day and part of the day before?

A. No, sir; I don't know it as a matter of fact.

X Q. 317. Do you know, or have you any knowledge,
609 of any other meeting on the 16th except the one at your house?

A. I have information of another meeting at which I was not present, on the 16th.

X Q. 318. Do you recollect where that meeting was had, or did you hear where it was had?

A. I don't know where that meeting was held.

—. ——?

A. No, of course not.

X Q. 321. Mr. Adams, did you ever have any conversation whatever with Mr. William Means about these notes, or the settlement of them, or anything of that kind, except on the 4th and 16th of October?

A. I cannot fix any time that I had any conversation with him except at the date you mentioned.

X Q. 322. I understood you to testify that Mr. Means was here at your grandfather's funeral?

A. Yes, sir; he was at T. W. Means' funeral.

X Q. 323. How long did he remain here after the funeral?

A. I can't answer that.

X Q. 324. I believe he was mentioned together with John Means as one of the executors of your grandfather's will. Was he not?

A. In the will itself; yes, sir.

X Q. 325. Was he consulted about qualifying, to your knowledge?

A. I have no recollection of that, Mr. Whitaker.

X Q. 326. Then your knowledge of what William Means thought about his interest in his father's estate and all the knowledge that you got of it in his presence was at the two meetings on the 4th of October and on the 16th of October, 1890, as you have stated?

A. I cannot recall any other discussions that I had with him about the matter just now.

X Q. 327. Were the orders of July 16 and 17 given to you by William Means without solicitation, or who were they given to? Who were they delivered to by William Means?

A. They were delivered to my mother to hand to me. That is

true of the order of June 16th, and the order of June 17th, I am not clear about whether it was handed to me, or whom it was handed to.

X Q. 328. Then they were not handed to you, were they?

A. The order of June 16th, I say, was handed to my mother for me.

X Q. 329. Do you know whether there was any under-
610 standing as between here and William Means as to whether they should be used or not, or what was to be done with them?

A. That order of June 16th was prepared by our attorneys, Messrs. Hager & Moore, and left with me to have William Means sign it. I turned it over to mother and asked her to show it to him and if he approved, to have him sign it. He did so and handed it back to her, and told her that he had signed it and had it witnessed.

X Q. 330. How did you ever ascertain the fact that William Means wanted to execute any such paper as that?

A. I did not know that he did not want to execute it, and from the fact that he signed it and had it witnessed and handed to mother to deliver to me caused me to think that he did want to sign it.

X Q. 332. Mr. Adams, what was the necessity, if these notes which were executed to Thomas W. Means were *bona fide* notes, of any further orders or papers being executed by William Means to you executors, or to anybody, in regard to them?

A. My understanding was, that it was our business as executors to settle the estate to pay the heirs what was coming to them and take receipts from them and inasmuch as we held the notes of William Means payable to the order of Thomas W. Means and inasmuch as he was a legatee of the will of Thomas W. Means we thought it would be better to have his receipt for those notes as a part of his distributable share than it would be to have the notes, and for that reason I wanted the receipt.

X Q. 333. I don't think you quite comprehend my question. My question was this: What necessity was there for your desiring an order, as you got on the 16th of July, 1890, directing these notes to be charged against his distributable share, if the notes executed by William Means to Thomas W. Means were *bona fide* notes?

A. I think I testified that that order of June 16th was drawn by our counsel, Messrs. Moore & Hager, and that that was the reason I wanted William Means to sign it, because the counsel advised it.

X Q. 334. Do you consider that the notes, if they were *bona fide*, were not as good without the order as with it against the estate or the distributable share of William Means?

A. Inasmuch as Messrs. Moore & Hager advised me to have William Means sign that order, I presume that that was the wisest course to pursue.

X Q. 335. Why didn't you go with it to William Means
611 yourself and ask him to sign it instead of asking your mother to get him to sign it?

A. Simply because William Means was always distant in his manner to me; he was always uppish and unapproachable.

X Q. 336. Do you know who drew the order signed by William Means and dated Ashland, Ky., June 17, 1890, the day after the one of the 16th was signed?

A. It is in William Means' handwriting. I don't know where he got it.

X Q. 337. I will now read this receipt to you:

"ASHLAND, KY., *June 17th*, 1890.

To whom it may concern:

This is to certify that my object in signing a certain paper dated June 16th, 1890, in which the executors of the estate of Thomas W. Means are directed to charge up my obligations against my interest in said estate was done to insure the estate against loss through purchase of such obligation- no matter how obtained, and for no other purpose whatever.

WILLIAM MEANS."

What is meant there, Mr. Adams, by purchase of such obligations?

A. I did not write that order, Mr. Whitaker, and I am no lawyer, and I don't know that I am able to argue out the meaning of that letter, except what it states in plain English.

X Q. 338. I believe you testified that you received a notice signed by William Means, in which he revokes the order of June 16th, 1890?

A. I did; yes, sir.

X Q. 339. Did you understand the purport of that document after you got it, what it meant and what it was intended for?

A. I think I did.

X Q. 340. Will you state what it was and what it was intended for?

A. I can't state it any more plainly than the document itself. The document is in evidence here.

X Q. 341. Did you understand that this document was intended to have the force and effect of William Means claiming his interest in his father's estate—his distributable share?

A. I understood it to be a revocation of his order of June 16th. That is what I understood by the paper.

X Q. 342. That is all you understood by it?

612 A. Well, I would have to read the paper to see. (Reads the paper.) As I understand the paper it merely revokes that paper of June 16th, and states his reason for revoking it. I don't think I can make it plainer than the paper makes itself.

X Q. 343. Isn't it the fact, Mr. Adams, that you as one of the executors with the will annexed of Thomas W. Means desired that order of June 16th, 1890, so as to put the question of whether or not these notes executed by William Means to Thomas W. Means beyond any doubt as to their being charged against William Means' distributable share?

A. I have answered that question, Mr. Whitaker. I have stated in substance that I wanted William Means to sign that order of June 16th, 1890, because our counsel advised it—Messrs. Moore & Hager.

X Q. 344. Was this notice of date July 28th, 1890, ever revoked; if so, when?

A. I think it was revoked October 4th, 1890.

X Q. 345. Now, Mr. Adams, I will ask you again, that if these notes which were executed by William Means to Thomas W. Means were *bona fide* indebtedness against William Means, and to be taken out of his distributable share in his father's estate, why did you want these papers revoked—this paper of July 29th, revoked?

A. I wanted it revoked because our counsel advised it.

X Q. 346. Did you ever have any suspicion in your mind that there would be some troubles growing out of the execution of those notes by William Means to Thomas W. Means in the distribution of the estate?

A. I never thought that there would be any. I never thought that they could be set aside.

X Q. 347. Last question repeated.

A. That is, you mean when this revocation was signed, I suppose.

X Q. 348. Before these orders were given?

A. No. I supposed that those notes—that they were—that they could be just as well charged against William Means' distributable share in the estate, but I took these other steps because the counsel advised it.

X Q. 349. Will you be kind enough to state what their advice was upon that subject, and what they based it upon, if you know?

A. I do not know what they based their advice on.

X Q. 350. You did not have any consultation with them about it, did you?

A. I don't remember of——

X Q. 351. Did you ever hear at any time before these orders
613 were executed, and this order was revoked, any conversations, or have any conversations as to there being trouble about these notes?

A. I do not recall any conversations I had with the attorneys about there being any trouble about these notes.

X Q. 352. With any one, I said.

A. I don't think that any one ever told me that those notes were not valid claims against William Means' distributable share.

X Q. 353. Did you know the provisions of your grandfather's will in regard to advancements and things of that kind?

A. I did not, on June 16th; no, sir—when that order of June 16th was issued.

X Q. 354. Did you know it before the settlement in October?

A. I did; yes, sir.

X Q. 355. Had you had any consultation with any persons upon that subject, as to the fact that there might be some difficulty

about charging up these notes against William Means' distributable share?

A. Well, if I did have any talk, I do not recollect it now.

X Q. 356. Did you ever hear any person talk about it in your presence, or mention it in any way?

A. Prior to October 4th, you mean?

X Q. 357. Prior to October 16th.

A. Whether those notes would be treated as gifts?

X Q. 358. Yes, sir.

A. I never heard of any one—never talked with any one who thought they would be treated as gifts.

X Q. 359. Did you ever have any conversation prior to that time about it with anybody?

A. Well, I don't recall any just now, Mr. Whitaker.

X Q. 360. Were you aware of suits being brought against William Means growing out of his bank troubles?

A. When?

X Q. 361. Well, from March, 1888, up to the settlement which took place in October, 1890.

A. Do you mean October 16th?

X Q. 362. Yes.

A. I have already testified that on October 16, Charles W. Baker said that certain creditors—that William Means owed a great deal more than he could pay and it was likely that creditors would press him. I do not remember that I knew whether any creditors were pressing him just at that time or not.

614 X Q. 363. That is the first you ever knew anything about those matters?

A. I can't say anything about that. That is the first thing that occurred in my mind now; that is, the conversation with Mr. Baker. I might have heard of something before that. I knew—I had heard—that he had failed and that his liabilities were very great and that his affairs were very much involved, but I did not know just to what extent.

X Q. 364. Mr. Adams, you introduced three letters from William Means to your mother. Is that all the letters you have in your possession from William Means to your mother?

A. No; it is not.

X Q. 365. Have you any other letters in your possession from him to her upon this subject of the estate?

A. I don't know that I have, Mr. Whitaker, and I don't know that I have not. I could not tell without looking over the letters.

X Q. 366. Did you ever know, or hear from any one, that William Means was to have his support out of this estate, no matter how it was settled, or have any support out of it?

A. No matter how it was settled?

X Q. 367. Any of these matters.

A. Do you mean, no matter how this suit that you are bringing against this estate results; is that the question?

X Q. 368. No, sir; my question is this. I will try to put it plainly. Did you not, before and at the time of the settlement on October

16th, 1890, know that William Means, in consideration of the settlements, was to have support out of this estate?

A. I had no such understanding at that time, before that time, or have I had any such understanding since that time.

X Q. 368. Then William Means had no assurance from any one that you know of, interested in this estate—your mother, Margaret Means, John Means or any of them—that if he would make this settlement, that he should be looked after in future by them?

A. He never had any such assurance that I know of, that I have information of, and I don't believe that he had any such assurance.

X Q. 369. William Means then, willingly and without any understanding as to any interest in this estate, voluntarily entered into a settlement by which he virtually made a pauper of himself and his family, did he?

615 A. If he made a pauper of himself and his family, he did it in connection with the Metropolitan National bank and the notes he executed to Thomas W. Means.

X Q. 370. Well, did he or not make a pauper out of himself by releasing all his interest in this estate if this settlement of October 16th was a *bona fide* settlement?

A. Why, I consider these notes to the estate, to Thomas W. Means, with interest, would have amounted to just as much as his receipt would have amounted to.

X Q. 371. Mr. Adams, I don't know that you have testified to the amount that Mr. Culbertson is said to have lost, but I believe you have read the testimony of John Means on that subject, haven't you?

A. I think I have read some evidence of John Means on that subject.

X Q. 372. Do you now recollect the amount that Mr. Culbertson is said to have lost for Thomas W. Means in some furnace venture out here—Buena Vista or Princess furnace?

A. Why, I think—that is, you want me to state from recollection what I know of John Means' testimony in this case?

X Q. 373. I want that, and also what you know about his loss?

A. Well, I don't think I can state exactly what John Means' testimony was on that subject. I remember reading it but I can't fix the amount of loss that Mr. Means testified to.

—. ——.

A. Not without any examination of the books and into the original cost of the properties, I could not do it.

X Q. 375. I believe, to refresh your recollection, that Mr. Means, your uncle, has testified that the loss was something over a hundred thousand dollars—perhaps over a hundred and thirty thousand dollars. Mr. W. W. Culbertson was a son-in-law of Thomas W. Means, wasn't he?

A. He was; yes, sir.

X Q. 376. Have you ever seen or read a paper executed some time in August, I think, or July, 1882, exonerating Mr. W. W. Culbertson from that loss?

A. I think that such a paper is in evidence.

X Q. 377. Have you read it?

A. I think I have read that paper; yes, sir.

Mr. HAGER: Do you understand him to exonerate him from the loss or his portion of the loss?

A. My recollection about that paper is, that it does not state the amount of the loss.

By Mr. WHITAKER:

616 X Q. 378. In consideration of one dollar, it exonerates him. Now, agreeable to the testimony of John Means, the loss to this estate, or loss to Thomas W. Means, is nearly as great as that of his son William Means, if it be a loss at all, in paying off these matters which you claim were for the Metropolitan National Bank trouble.

A. If John Means has testified that the loss of Thomas W. Means in the firm of Culbertson, Means & Culbertson is one hundred and thirty thousand dollars, it is self-evidence that that sum is nearly equal to the notes, with interest, that the estate of Thomas W. Means held against William Means.

X Q. 379. Now, Mr. Adams, from your knowledge of your grandfather is it your belief that he would exonerate a son-in-law for that amount of money and charge a son for a like amount, if he was attending to his own affairs and managing his own matters?

A. The loss of Thomas W. Means in the firm of Culbertson, Means & Culbertson, was largely his individual loss in the business of that firm. The amount that he released—the loss that he released Captain Culbertson from—supposing the loss to have been one hundred and thirty thousand dollars for the firm, I don't think would have exceeded thirty-five thousand dollars for Captain Culbertson, therefore I don't think that he released Captain Culbertson from a loss exceeding $35,000, and I do not think it amounted to that much. The heaviest part of the loss fell upon Thomas W. Means as a partner in that unlucky business venture.

X Q. 380. I will ask you the question over. From your acquaintance and knowledge of your grandfather, do you believe, if he had been managing his own matters, that he would relinquish a son-in-law from an indebtedness to him and charge up a son with indebtedness in the sum named?

Same objections repeated.

A. From my knowledge of this matter referred to, I suppose that T. W. Means had little hope of ever collecting any claim from Captain Culbertson and that he released that indebtedness because he thought it was worthless—comparatively worthless. And from my knowledge of Thomas W. Means and from what he said to me, that he intended to make all his children equal in the distribution of his estate, all his living children equal, I think that he would not have released these obligations of William Means.

X Q. 381. Did you hear John Means testify in this case, in
617 his examination-in-chief, that the reason why Mrs. Culbertson or her heir, her son, in 1884 did not get a hundred thousand dollars which would make his advancements to his children equal—that is, $180,000 each—was because Captain Culbertson had lost heavily in the Buena Vista furnace and he thought that would about even up the hundred thousand dollars which the others had gotton? Did you hear him testify to that?

A. I don't think I heard him testify in those words.

X Q. 382. Did you hear him testify in substance that?

A. I don't think I did.

X Q. 383. What — you mean by equal distribution between his then living children, or his living children; what do you mean by that? I don't understand it.

A. Why, living children in distinction from those who were dead.

X Q. 384. Do I understand you to mean that Mrs. Culbertson's child was not to get her share out of the estate?

A. I heard him state—perhaps I can answer that question by explaining. I have heard him state that he intended to make all his children equal. That was after the death of Mrs. Culbertson. That he intended to make all his children—make equal distributions to all his children. I supposed that referred to those children who were living at the time he made the statement.

X Q. 385. He didn't make any difference in his will, did he, in regard to young Tom Culbertson, his grandson—between him and any other of the children, as to the share that he should have?

A. No material difference. He gave the furniture, his household furniture, to his living children in distinction from the heir of the deceased child. That is one of the items of his will.

X Q. 395. Aren't there like charges in there to John Means charging for book-keeping?

A. I don't recollect any charges of John Means for book-keeping.

X Q. 396. I understand you to say the reason you got your mother to have William Means sign that receipt of June 16th was, because you were not on particularly good terms with William Means or that there was a sort of coolness between you?

A. There was a top-lofty air about William Means that I could not brook and would not brook and I did not cultivate his acquaintance with much diligence.

Mr. ANDERSON: Witness need not answer this question.

618 X Q 406. Have you any objection to answering this question other than the one interposed by Mr. Anderson?

A. By the advice of counsel I decline to answer the question. That is my only reason.

X Q. 407. Mr. Adams, did you not, prior to the order of June 16th, hear of disagreements between William Means and his family?

A. What do you mean by disagreements?

X Q. 408. Unpleasantness and getting along badly and things of that kind.

A. Why, I think I did, Mr. Whitaker, but I could not state the time or place I heard it, or the person from whom I heard it.

X Q. 409. Did you, prior to that time, hear anything about suit for alimony, prior to June 16th?

A. Well, I don't know whether I did or did not. I don't remember it now, if I did.

X Q. 410. Have you stated in your examination-in chief and in this cross-examination, all that you know about these settlements and transactions and what brought them about and why they were made and so forth?

A. That is a pretty broad question. I don't know—I would not be able to answer it unless you would make it a little more specific.

X Q. 411. I understood you to say that you never at any time heard that William Means' creditors were pressing him prior to the settlement in June, 1890.

Question objected to because it assumes that he has stated a fact that he has not stated.

A. By the settlement of June 16th, 1890, do you mean the order of William Means of June 16, 1890?

X Q. 412. Yes, and the settlement on the 18th.

A. I cannot name a time or place where I heard anything of that kind, or person from whom I heard it, but I presume I did hear that William Means was heavily involved at that time and I do not know that I had heard previous to that time that creditors were pressing him. I don't say I did not and I don't say I did, and my recollection is not clear on that point. That is nearly three years ago.

X Q. 425. Did you ever hear, until you got your letter of William Means to your mother anything about any trust deed, or trust, or anything of that kind?

A. I never heard about any trust deed, or trust, or whatever you may call it, until the summer or fall of 1891.

X Q. 426. Never heard anything spoken about it?

A. Never heard anything spoken about it.

X Q. 427. Where were you in 1888 and '89?

619 A. Well, I think I was here in Ashland most of the time.

X Q. 428. You didn't know anything about these matters that were going on between John Means and William Means, did you, at the time that they were transpiring?

A. Please specify what matters?

X Q. 429. Giving notes and advancing money and matters of that kind?

A. I did not know the full details of that business.

X Q. 430. You were not consulted at all about it?

A. I was not consulted: no, sir.

X Q. 431. John Means didn't say much about it, did he, in your presence, as to what he was doing?

A. I don't remember of hearing much from him on the subject at that time.

X Q. 432. Were you living at your grandfather's at the time of the failure in February, 1888?

A. Yes, sir.

X Q. 433. When did you hear it first?

A. I first saw it in the paper. The first information I had was what I got from the daily paper, I suppose.

X Q. 434. Well, was there any notes made by you about it?

A. Well, I don't remember anything I said about it at the time.

X Q. 435. Did you talk to anybody about it?

A. I presume I did.

X Q. 436. Talked to Mr. John Means about it?

A. I presume I did.

X Q. 437. Well, did you?

A. I suppose I did. I don't remember of saying anything to him about it, but I suppose I did.

X Q. 438. Much said about it—about your house?

A. Oh, we all discussed it.

X Q. 439. Were you down at Cincinnati at all on the business yourself?

A. No, sir, not on business connected with that. I was in Cincinnati once. I think it was just before the trial. I don't remember what called me down there but I don't think it was connected with any business of William Means at that time.

Re-examination by Mr. ANDERSON:

Q. 440. Mr. Adams, at the time of the failure of the Metropolitan bank, state whether or not the fact of the failure was made known to Thomas W. Means?

Objected to. It is a question in chief.

A. It was made known within a few days of the failure.
620 I don't think it was made known to him the first day we got the paper. I don't know what it was. Yes, I know he knew it within a few days of the failure, if not the same day. He knew it within a week, if not less than a week, and possibly on the day we got the paper.

X Q. 441. State whether the things in the paper concerning the paper were read to him, and if so, by whom?

A. I read him the paper and it is possible I read him the account of the failure. I don't remember about it but I know that he knew it, because he inquired about it.

X Q. 442. State whether the fact of the indictment of William Means was made known to him?

A. I don't think he ever knew anything about the indictment. I think we always kept that from him.

X Q. 443. At what time, as nearly as you can state, were these letters to your mother that have been put in evidence received, with reference to their dates?

A. I think they were received shortly after they were mailed. One of them was enclosed to me.

X Q. 444. I mean with reference to the dates they bear? Were they received on or about that time or within a few days?

A. A few days after.

THOMAS M. ADAMS recalled.

By Mr. ANDERSON:

Q. 1. Mr. Means, John Means, has testified to making the entry on the books of his father in the account of Mrs. Culbertson, charging some $27,000 or thereabouts, after her death, upon certain memoranda that were furnished by you. Have you looked at the memoranda which she has testified that he used in making that, and can you state whether you furnished the memoranda; if so, from what book?

A. I furnished the memoranda referred to as furnished by me, on pages 86 and 87, Journal B. I obtained them from the books of Means & Co. at their place of business at Princess furnace in '78.

Question and answer objected to as irrelevant and incompetent and not bearing upon matters in issue in this case.

Q. 2. How did you come to furnish them?

A. The books of T. W. Means containing the account of Means & Co. did not agree with the account of Thomas W. Means & Co. on Means & Co.'s books, and in order to reconcile those accounts I obtained these memoranda from the book of Means & Co. at the Princess furnace.

621 E. C. MEANS, being by me first duly sworn, testified as follows:

Direct examination by Mr. ANDERSON:

Q. 1. State your name, age, residence and occupation?

A. Ellison Cook Means; 28; Ashland, Kentucky; superintendent of Ashland Coal & Iron Railway Company.

Q. 2. What other position in business ventures, if any, do you occupy, as nearly as you can recall?

A. I am president of the Low Moor Iron Company of Virginia; president of the Clinton Fire Brick Works of Ashland, Ky.; I am a director of Means, Kyle & Company; in the Ashland Artificial Ice Company; Kentucky Iron, Coal and Manufacturing Company, and in the Cincinnati, Portsmouth and Big Sandy Packet Company.

Q. 3. You are also one of the respondents as administrator in this case?

A. I am.

Q. 4. Look at the paper handed you and state what it is?

A. This paper is dated at Ashland, Ky., June 16, 1890; signed by William Means; witnessed by S. B. E. Drennen and James Means. It is a direction to the executors of the will of Thomas W.

Means, or the personal representatives hereafter to be appointed, to charge against his distributable share as heir-at-law, etc. It is identified "Ashland, Ky., May 19, 1893. B. Perin, sp. ex."

Q. 5. State when you first saw that paper?

A. I think I first saw this paper on the day it is dated, in Ashland, Ky., at or near the residence of Thomas M. Adams.

As the paper has already been copied into the record as a part of the deposition of Thomas M. Adams, it is not repeated here.

Q. 6. Look at the paper now handed you and state what it is?

A. This paper is identified by B. Perin, sp. ex., at Ashland, Ky., May 19, 1893. It is dated at Ashland, Ky., June 17, 1890, addressed to whom it may concern, and it is an explanation of the previous paper handed to me, and signed by William Means.

Q. 7. When did you first see that?

A. I saw that on the day it was written, or the day after, for the first time.

622 Q. 8. In whose handwriting are each of those papers?

A. Handwriting of William Means.

Q. 9. What is the endorsement on the back of the paper of June 16?

A.—

"This paper came to the possession of the undersigned June 16, 1890, and has been held jointly since and now as administrators, with the will annexed of Thomas W. Means, deceased, and upon our appointment and qualification as such we note and endorse hereon its delivery and acceptance to us and by us. July"—I can't tell whether that is 27 or 29. My impression is that it ought to have been dated the 28th.

"July 29, 1890.

E. C. MEANS,
THOMAS M. ADAMS,
Administrators, with Will Annexed, of the Estate of Thomas W. Means.

Attest: JOHN F. HAGER."

Q. 10. Who signed those signatures, E. C. Means and Thomas M. Adams?

A. "E. C. Means" is my signature and "Thomas M. Adams" is signed by Thomas M. Adams.

Q. 11. When was the endorsement made?

A. It was made the day on which we were appointed administrators.

This paper being copied into the record, is not now copied again.

Q. 12. Look at the paper now handed you and state what it is?

A. This paper was identified at Cincinnati, April 6, '93, by B. Perin, sp. ex.; also Ashland, Ky., May 9, '93, by B. Perin, sp. ex. It is a revocation of the order of June 16th, and signed by William Means, and is in the handwriting of William Means, dated July 28, 1890, and on the margin:

"To E. C. Means and Thomas M. Adams, administrators, with will annexed, of Thomas W. Means:

The matters of revocation contained in this notice and this notice and paper are hereby revoked.

WILLIAM MEANS.

October 4, 1890.

Attest: JOHN F. HAGER."

Q. 13. When did you first see the original paper of July 28, 1890?
A. In the court-house at Catlettsburg.
Q. 14. When?
A. On July 28, 1890.
Q. 15. In whose hand?
A. My recollection is that it was handed to me by Evan Williams.
Q. 16. Was it handed to you or to Mr. Adams?
A. This one was handed to me.
623 Q. 17. Did you receive two on that day?
A. I received only one.
Q. 18. Did any one else receive one?
A. Mr. Adams received one on the same day.
Q. 19. State whether his was a copy of the one that was handed to you—of this one.
A. I think it was. I do not remember of comparing them.

This paper of July 28th and marginal entry is not restated in the record here because it has already been incorporated into the record.

Q. 20. State what that is?
A. This paper is dated Ashland, Ky., July 28th, 1890, and signed by Mr. Jordan and Evan F. Williams. It is from the attorneys to Mr. E. Cook Means and Thomas M Adams. Identified at Ashland, Ky., May 20th, '93, by B. Perin, sp. ex.
Q. 21. When did you first see that paper?
A. On July 28th, 1890.
Q. 22. Where and under what circumstances?
A. I don't remember the circumstances, nor where.
Q. 23. Well, was it in the hands of Jordan & Jordan or of yourself?
A. It was in my own hands that I saw it and read it.

This paper having already been incorporated into the evidence, it is not here restated.

Q. 24. Was William Means at Catlettsburg on the day that you were appointed executor or administrator of Thomas W. Means?
A. I think he was.
Q. 25. State whether or not you saw William Means on the 4th day of October, 1890; if so, where and under what circumstances?
A. On the 4th of October, 1890, William Means with Evan F. Williams and John F. Hager and Thomas Adams came into my office at the Ashland improvement between four and six o'clock in the afternoon. At that time I was secretary of the company.

Q. 26. What took place there at that time?

A. One of the above gentlemen said that William Means wished to receipt for his indebtedness for the estate of Thomas W. Means and I was asked if I had the revocation that was served on us at Catlettsburg, Mr. Adams stating that his was where he could not get it that afternoon. I had the one that is offered in evidence in the safe of the company, and produced it. William Means
624 signified his intention of revoking that paper and Mr. Hager wrote the marginal note which William Means signed at that time and in my presence.

Q. 27. Who was with William Means, if any one?

A. Evan William-, John F. Hager and T. M. Adams.

Q. 28. What became of William Means and Evan Williams after he signed the marginal entry upon the revocation?

A. They said they were going to Ironton and would be back after supper the same day.

Q. 29. Well, did they go away?

A. They went away from the office.

Q. 30. Did they come back?

A. Not that day.

Q. 31. Well, when did you next see them or either of them?

A. The next time that I saw them was on the 16th of October, 1890. Evan F. Williams and Charles W. Baker came to the improvement company office where I was and asked me to go to the hotel with them to meet William Means; that they had come to try to close up his indebtedness to the estate. We went around to the hotel, went upstairs into the room in which William Means was, and the four of us were there together, and no one else.

Q. 32. What happened?

A. Mr. Baker did most of the talking in the room. He wanted to know the amount that William Means was indebted to the estate, which I told him—either exactly, up to the 6th of October, or in approximate amount—probably the exact amount. He wanted to know how much William Means owed to John Means, Margaret Means and Mary A. Adams. I told him the amount that he owed to John Means and to Margaret Means. I may have told him the amounts with interest he owed to Mrs. Adams. He wanted to know the probable amount that would be realized out of the estate. I told him that I thought that if we continued to realize from the remaining securities unsold as near the appraised value as we had heretofore on those we had sold, that the estate would probably realize seven hundred and fifty thousand dollars. He said that he wanted William Means to receipt in full for the amount that he owed the estate. He then wanted to know if the amounts that he owed to the others, to Margaret Means and John Means and Mrs. Adams would be paid back to William Means if he receipted to the administrators for that amount and I told him that I could not say that they would pay it back to him in a lump sum—that
625 they considered them not lost and that they did not intend to let him suffer, but that that was as far as I felt that I could speak. They then wanted to know if I would be willing to pay

that money to them if he would receipt for it and I told them that if Mr. Adams the administrator was willing, and that if we could secure refunding bonds from John Means, Margaret A. Means and Mrs. Adams that I would be willing to pay it over to Margaret Means, John Means and Mrs. Adams. Well, Baker wanted to know if I would pay it to William Means and I told him I could not promise any more than I had said. There was no understanding at all that anything could be done without the consent of Mr. Adams and with the advice of Mr. Hager. Mr. Baker said he thought William Means' brother and sisters had stood by him and would stand by him and that the best thing that he could do would be to undertake to pay them what he owed them and depend on them for what they would be willing to do to support him, and that was my understanding in the matter, that he was to pay them and then trust to them for charity. There never was a direct promise that the money should be refunded to William Means. It was only the statement about my knowledge of their feelings toward him. I told them at that time that I was the agent for Margaret A. Means and John Means. They were both absent from Ashland.

Adjourned to Thursday, May 25th, 1893, at 9.30 a. m.

THURSDAY, *May 25th*, 1893—9.30 a. m.

Present: The same as before.

Examination of E. C. MEANS continued by Mr. ANDERSON:

(Witness continues:) By the word charity there I meant the probable acts of brother and sister towards a brother in need. My recollection is that Evan F. Williams asked if the money would be paid back to them—to William Means—and I made to him about the same reply as to Mr. Baker, it being my understanding, and as I believed at the time and have believed since, the understanding of the others, that there was no promise that it should be paid to him in the full amount or in any amount except as their feelings as brothers and sisters might dictate.

Q. 33. State if there was anything else said in the interview—any other topics discussed than those that you have stated; if so, state what, if you recall them.

A. In the interview of October 4th and October 16th, 1890, William Means or Evan Williams, or perhaps both, said that
626 William Means desired to give an order to the administrators of Thomas W. Means to pay to John Means, Margaret A. Means and Mrs. Adams the amounts that he owed to them or that they had expended on his account. I was asked to give the amounts that he owed to Margaret Means and John Means and Mr. Adams was asked for the amount that he owed to Mrs. Adams. I gave to them at that time, according to my memory the amounts that I thought he owed to John Means and to Margaret A. Means, but told them that the exact amount I could get from the books of John Means and Margaret A. Means and would bring those amounts to the office after supper that day, after they had returned—that is,

Evan Williams and William Means—from Ironton, where they said they were going. Evan Williams said that they wanted to pay everything in the way of indebtedness or expenses to which John Means and Margaret Means had been placed. I told them that outside of what was on the books charged to William Means' account, the only other item that I knew of was in the cash book of John Means and had been charged to expense, and it was his traveling expenses to and from Cincinnati and other places, and telegrams and some small items that had not been charged in William Means' account. At the time of giving the amount of Margaret Means on October 4th, I forgot the note of William Means to her in her possession, or among her papers, and gave as I remember it, the amount on her ledger. At supper time, when I went home, I got the books of John Means and the books of Margaret Means and looked up these amounts referred to. I first started to copy the journal entries from the books of John Means and I saw at once that that would take too long and so I commenced on the debit side of his ledger account and simply made out a partial account running backwards from October, 1890, and then found that previous balance was so far ahead, that is, prior, that it would take too long to go through and get down to the office in time to meet William Means if he returned from Ironton, and took the balance due on the account which I found to be $8,578 33. I then went through the cash book with the assistance of my brother and picked out the items, a number of which were marked with, I think it was, W. M. in small letters to indicate that the expense had been for William Means, and made a memorandum of them, adding them up and found the amount to be $282.95. Margaret Means' books, I took the balance on her ledger, which I found to be $10,597.50. I then found the amount of the note which was $5,730.61. The interest on it I calcu-
627 lated and made to be $1,719.18 which made the total amount due on the note $7,449.79, which made a total then, adding the note and the balance and interest on the note together, $18,047.29. I found too that he was entitled to a credit of $700. I am not positive about that $700, whether it was an error in the interest calculation, or another credit. I found that the interest calculation was wrong and that it is about $700 off. My recollection about that is not clear and it is possible that that $700 was a credit for coupons on the Ashland Coal & Iron Railway Company bonds obtained in the settlement with Ramsey, Maxwell & Ramsey.

At our meeting at the improvement company office after supper on October 4th, Mr. Adams reported that the indebtedness due to Mrs. Adams, was $1,650, which made a total amount:

Margaret A. Means	$17,347.29
John Means	8,862.28
Mary A. Adams	1,650.00
A total of	$27,859.57

I made a memorandum of the different accounts and amounts from the books of John Means and Margaret A. Means and carried

them with me to the office of the improvement company on October 4th, 1890, expecting there to meet William Means and Evan Williams and give them these amounts and show them. In looking over the account of John Means there were two items that were not obtained, which were a charge proper against William Means, one of them of $315 and the other one of $100, which were amounts handed to W. B. Seaton to pay some expenses at Cincinnati at the time of the trial of William Means in the United States court at that place. These I learned about afterwards.

On October 16th at the meeting at the hotel, I gave to William Means and to Baker and Williams, as a reply to the question of the amount that was owing to John Means and Margaret Means and Mrs. Adams the amounts that I had ascertained and explained at that time about the traveling expenses and telegrams, etc., amounting to $283.95 as being the amount that I had been requested to find as all items in addition to those actual charges against William Means and due to John Means. I believe that at that time one of the others made a memorandum of these amounts because we talked them over and I kept the original paper from which I gave them the amount.

Q. 34. Have you that paper here?

628 A. I have. I have been reading from that paper, in part. I have not read the paper in full because it is not in the usual form of a bill or an account. While I believe the amount, with that exception of the interest calculation on the note of Margaret Means, are correct. The note referred to as the note of William Means to Margaret A. Means is dated August 25th, 1887, and is as follows:

One day after date I promise to pay to the order of Margaret A. Means fifty-seven hundred thirty and $\frac{61}{100}$ dollars value received with interest from date.

$5,730.61. WILLIAM MEANS.

Q. 35. Who wrote and signed that note?

A. It is written in the handwriting of William Means and signed in the handwriting of William Means.

Q. 36. When did you come into possession of the note as Miss Means' agent, if at all?

A. I first came into possession of the note in the spring or summer of 1890. I found it among her papers. It had probably been there some time before.

Q. 37. If you know, state when that note was first charged against William Means on the books of Margaret A. Means?

A. It was in November or December of 1888. I have seen it written on her books as of about that date.

Question and answer objected to because the witness has referred to books of Margaret A. Means which are the best evidence of when the entry was made, if at all.

Q. 38. When did you first see the papers now handed you identified and marked Exhibit 20, Ashland, Ky., May 17th, 1893, B. Perin,

sp. ex., and Exhibit 21, Ashland, Ky., May 17th, 1893, B. Perin sp. ex.?

A. I don't remember that I ever saw these papers before but if I did it was in October of 1890.

Q. 39. Do you know, and if so, state what arrangement, if any, was made on or about the 16th day of October, 1890, for obtaining those papers and what allusions were made to refunding bonds and indemnity bonds?

A. At the hotel on the 16th of October, 1890, referred to in one of my previous answers, I made, as one of the conditions upon which I would agree, with the consent of Mr. Adams, as administrator to pay to Margaret Means, John Means and Mary A. Adams the amounts owing to them by William Means upon his order or receipt to the administrators for those amounts, that a refunding bond should be obtained from John Means, Margaret Means and Mary A. Adams that we might pay to them, so that we would be protected in case the estate did not realize enough to make William Means' dis-
629 tributable share equal to the sum of $136,000.00 that he was indebted to the estate, added to the amount to be paid to Margaret A. Means, John Means and Mrs. Adams, the refunding bonds being only for the amounts paid to John Means, Margaret A. Means and Mrs. Adams, and not for the notes or amounts due to the estate from William Means as an individual indebtedness to the estate.

Q. 40. Well, what arrangement was made, if any, as to who was to get the bonds or secure them?

A. Mr. John F. Hager agreed to draw up the bond and forward it to John Means and Margaret A. Means and Mrs. Mary A. Adams.

Q. 41. Were such bonds ever procured from the three?

A. I see before me the bonds that were procured from John Means and Margaret A. Means. I do not know that any was ever obtained from Mrs. Adams.

Q. 42. Was ever the $26,000 or thereabouts paid to them—John, Margaret and Mrs. Adams or any part thereof; if not, why not?

A. No part of that amount was ever paid to them by Adams and myself as administrators, because Miss Margaret A. Means did not approve of the giving of the bond and we did not consider that we were under any obligations to make an immediate payment of that amount. It is true that Margaret A. Means signed the bond, but at the same time she wrote to me objecting to the signing of the bond, and for that reason I believe that she did not want to receive the money.

Q. 43. I believe I asked you, but I am not certain, did Mrs. Adams sign any bond?

A. Not that I know of. I think not.

Q. 44. State whether or not Mr. Adams assented to the payment of that money under that arrangement at any time, for his mother, or whether she did, to her; or as administrator assent to the payment to her?

A. I don't remember that he ever did.

Q. 45. Now, then, what took place after the 16th of October, if

anything, relative to these indebtedness to John, Margaret and Mrs. Adams?

A. I met Mr. Adams and told him that I did not believe that it would be well for us as administrators to pay those amounts nor for the others to receive those amounts and give the bond, and suggested that we declined to go any further in that matter, and to return William Means' receipt to him.

Q. 46. Well, what was done after that, if anything?

A. Mr. Adams told me that he had made a tender of the
630 receipts to William Means and that William Means or Mr. Adams, one of them, had put it on the mantel-piece and that the receipts had been left there. On October 31st, we were served with papers by William Means ordering us to pay these amounts, or to pay certain amounts to Margaret Means and John Means and Mrs. Mary A. Adams, to take their receipt for him and to charge the same to him.

Q. 47. These orders of October 31st are the ones referred to in the answer of yourself and Adams as administrators?

A. They are.

Q. 48. And also introduced in evidence heretofore in the record?

A. Yes, sir.

Q. 49. Well, when you were served with this order, or whatever it may be called, of October 31st, who gave it to you?

A. William Means came into the improvement company's office accompanied by A. E. Lampton. William Means walked up to me and handed me three orders, three papers which were the orders that have been offered in evidence, as I understand.

Q. 50. Well, what did you do?

A. I took them and sat down to read them. William Means and Mr. Lampton walked out.

We introduce these original papers and file them as Exhibits 1, 2 and 3 of Cook Means' deposition:

Cin'ti, April 6, '93. B. Perin, Sp. Ex.

E. C. Means, Thomas M. Adams, executors of Thomas W. Means, dec'd.

GENTLEMEN: I hereby assign to Margaret A. Means sufficient of my interest in the estate of Thomas W. Means, deceased, to pay to her to the sum of $16,112.46 advanced by her to me from time to time, and for which I am indebted to her.

And you are further ordered and directed to make a note and memorandum of this assignment.

You are further ordered and directed to pay to said Margaret A. Means without further order or receipt upon my part the sum of $16,112.46 as aforesaid, out of the first distributive money of mine coming into your hands, without further order or receipt from me.

You are directed to take her receipt for me for so much money.

WILLIAM MEANS.

Ashland, Ky., October 31st, 1890.

E. C. Means' Ex. 1. Ashland, Ky., May 25, '93. B. Perin, sp. ex.

631 Cin'ti, April 6, '93. B. Perin, Sp. Ex.

E. C. Means, Thomas M. Adams, executors of Thomas W. Means, dec'd.

GENTLEMEN: I hereby assign to Mary A. Adams sufficient of my interest in the estate of Thomas W. Means, deceased, to pay to her to the sum of $1,650.00 advanced by her to me from time to time, and for which I am indebted to her.

And you are further ordered and directed to make a note and memorandum of this assignment.

You are further ordered and directed to pay to said Mary A. Adams without further order or receipt upon my part the sum of $1,650.00 as aforesaid, out of the first distributive money of mine coming into your hands, without further order or receipt from me.

You are directed to take her receipt for me for so much money.

WILLIAM MEANS.

Ashland, Ky., Oct. 3d, 1890.

E. C. Means' Ex. 2. Ashland, Ky., May 25th, '93. B. Perin, sp. ex.

Cin'ti, April 6, '93. B. Perin, Sp. Ex.

E. C. Means, Thomas M. Adams, executors of Thomas W. Means, dec'd.

GENTLEMEN: I hereby assign to John Means sufficient of my interest in the estate of Thomas W. Means, deceased, to pay to him to the sum of $8,478.33 advanced by him to me from time to time, and for which I am indebted to him.

And you are further ordered and directed to make a note and memorandum of this assignment.

You are further ordered and directed to pay to said John Means without further order or receipt upon my part the sum of $8,478.33 as aforesaid, out of the first distributive money of mine coming into your hands, without further order or receipt from me.

You are directed to take his receipt for me for so much money.

WILLIAM MEANS.

Ashland, Ky., Oct. 31st, 1890.

E. C. Means' Ex. 3. Ashland, Ky., May 25, '93. B. Perin, sp. ex.

632 Q. 55. I will ask you if the amounts shown by these papers $16,112.46 to Margaret A. Means, $8,478.33 to John Means and $1,650 to Mrs. Adams, aggregated the amount that you gave to those parties according to your memorandum at the time of the conference on the 16th of October, 1890; if not, state the difference?

A. The amount of John Means' indebtedness that I gave to them was the actual charge of $8,578.33 on his books and the items picked out from his expense account of $283.95, making a total of $8,862.28. The amount of the order to pay to John Means is only $8,478.33, a difference of $383.95. The Margaret A. Means account, as I gave it to William Means, was $17,347.29, while his order of October 31, '90, is for $16,112.46. The amount for Mary A. Adams agrees with the order of October 31st, 1890.

Q. 56. The amounts in these three orders of the 31st of October then, agree in the aggregate with the amount in the $26,000.00 receipt that has been referred to in the evidence?

A. They agree.

Q. 57. How much less is the amount in the order to Margaret A. Means than what you furnished as being due to her?

A. $1,234.83.

Q. 58. How soon, if at all, did John Means and Margaret Means have notice of this assignment and order of October 31st to them respectively?

A. I am not positive that I wrote to them about it, but in the last week in December, at Philadelphia, Pennsylvania, I told both of them about it, and they seemed pleased to know that they were going to get that money and expected to get it if the estate would realize more than $136,000 for each distributee.

Question and answer objected to as irrelevant and incompetent.

Q. 59. State who, if any one, was then here, October 31st, at Ashland, representing John Means and Margaret A. Means in their money affairs, collecting any claims that might be coming to them.

A. I was acting as their agent at that time in collecting accounts due to them.

Question and answer objected to as irrelevant and incompetent.

Q. 60. Have you with you a statement of the account of Margaret A. Means that you have referred to that makes up the $16,112.46; if so, will you produce it?

633 A. I have here an account made from the books of Margaret A. Means up to October 24th, 1890, which shows a balance due to her upon the account from William Means of $10,597.50.

Q. 61. Does that include or not, the note which you have read in evidence?

A. It does not. This is simply the account and does not include the note.

Q. 62. Have you made a statement of the account of John Means up to that date, that was included?

A. I have not. I understand there is one in evidence. The account of Margaret Means with William Means is marked Ex. 4 and is as follows:

William Means in account with Margaret A. Means.

Dr.

1888.			
Dec.	14.	2,620 francs remitted to Countess d'Adheimer..	$514.32
1889.			
Jan.	8.	1,000 francs remitted to Countess d'Adheimer..	196.13
"	"	3,000 francs remitted to Emile Seignouret.....	589.14
Feb.	15.	1,000 francs cabled to Countess d'Adheimer...	197.60
Mar.	4.	3,000 francs " " Emile Seignouret.....	588.91
May	3.	3,000 " " " Count's d'Adheimer	589.28
"	6.	3,000 " " " Emile Seignouret.....	590.34
"	17.	New York draft sent Warren Higley, advanced	

	as attorney fee for services		300.00
June 5.	Covington ½ city and State taxes by G. R. Dudley, Eliza Labrot	$7.13	
		14.07	
		$21.20	
	A. Labrot	7.14	
			28.34
July 2.	3,600 francs cabled to Countess d'Adheimer		511.65
" "	3,500 " " " Emile Seignouret		689.71
634			
July 8.	Remitted to G. R. Dudley, to pay Labrot tax in Covington, Ky.		130.00
Dec. 26.	December taxes on Labrot property		14.07
1890.			
June 2.	5,000 francs cabled to Countess d'Arheimer		975.61
	5,000 " " " Emile Seignouret		975.61
	Cablegrams		6.49
Aug. 22.	Paid to Ramsey, Maxwell & Ramsey, attorneys for heirs of A. Labrot		70,000.00

CR.

1888.		
Dec. 3.	Note of Thomas W. Means in my favor, 3rd December, 1888, at 1 day, for which am to pay this amount for William Means, as executor of estate of A. Labrot, deceased, as trustee for Mrs. Emile Seignouret and as trustee for Countess d'Adheimer	$45,000.00
1889.		
Feb. 1.	10 Ashland Coal and Iron R'y coupons, $35 each	350.00
June 1.	Paid by Frank Huntington on note and interest of H. D. Huntington	10,600.70
July 24.	10 Ashland Coal and Iron R'y coupons, $35 each, due Aug. 1st	350.00
1890.		
Aug. 22.	10 Ashland Coal and Iron R'y Co. bonds, $1,000 each	10,000.00

Q. 63. What paper do you hold in your hand?

A. I hold in my hand the receipt of William Means as legatee under the will of Thomas W. Means, deceased, for $136,035.75 as part of his distributable share as legatee under the will.

Q. 64. When was that receipt signed and where?

A. It was signed on October 16th., at the residence of Mrs. Mary A. Adams.

Q. 65. Was it delivered there?

A. It was.

Q. 66. Were you present?

A. I was present when he was writing it, but I am not positive that I was there when he completed it.

Q. 67. In whose handwriting is it, and who signed it?

A. It is in the handwriting of William Means, and it is signed by William Means. It is identified: "Ashland, Ky., May 19th, '93. B. Perin, sp. ex."

635 As the contents of this paper have already been introduced into the record as part of the testimony of Thomas M. Adams, it is not here repeated.

Q. 68. What was said, if anything, that you recollect, about the signing of that receipt and any other paper that was signed there?

A. Well, Mr. Charles Baker, Mr. William Means, Mr. Evan F. Williams and myself went to Mrs. Adams' house to see Mr. Adams about signing such a receipt. We talked to Mr. Adams, and he said that he had a form prepared and the interest calculation had been made up to October 6th, 1890, and that if William Means would copy that, it would answer for the receipt, we would turn the notes over to him. There was at the same time a conversation about the other receipts and the other receipts for the amount to be paid to John Means and Margaret A. Means and Mrs. Adams, and Mr. Adams wanted those receipts signed separate and by themselves, so that the two transactions would be kept separate, as they were separate in fact. I approved the plan. There was no objection raised to it by any one that I know of, or remember about. Mr. Baker was present and also Evan Williams. Mr. Hager came in after supper, I think it was, and was present while the receipts for the $26,000 were being prepared, and passed part of the time while the copy was being made of the receipt for $136,000.00.

Q. 69. The last sentence of this receipt is, "This receipt is given in pursuance of settlement made October 6th, 1890." Why does it refer to settlement of October 6th, 1890, when it is dated the 16th of October?

A. Because the interest had been calculated to October 6th, expecting Mr. Means and Evan Williams to be here on that date to sign this receipt, or a receipt for $136,000.00; and that the matter might be completed on October 16th, the interest calculation of October 6th was accepted as final and no new calculation made.

Q. 70. State whether a duplicate or copy of that receipt was at the same time signed by William Means.

A. There was one signed by William Means that is now on file at Catlettsburg, in the handwriting of Thomas M. Adams, as part of our settlement with the probate court.

Q. 71. Who made the interest calculations upon the claims or notes set out in this receipt up to the 6th of October?

A. I did.

Q. 72. State whether they are correct.

636 A. They are correct, as I believe. At the time I made the calculation, Mr. E. E. Seaton made calculations of the same amounts for the same time and by a different method, and we checked our work so that I was satisfied and am satisfied that the calculations are correct.

Q. 73. What paper is that that you hold now?

A. This is a receipt signed by William Means, dated October 18, 1890, at Ashland, Ky., for the sum of $26,240.79, and witnessed by A. E. Lampton. The body of the paper is in the handwriting of John F. Hager. It is marked "Copy," but it is the original, I guess. I think the word copy is in the handwriting of William Means.

Q. 74. State if there has been a change in the date of that paper; if so, what change, as nearly as you can state?

A. The date appears to have been changed from the 17th to the 18th.

Q. 75. I believe you stated that the paper was signed on the 16th by William Means. If so, explain why that paper was dated the 17th and then changed to the 18th, if you know.

A. My recollection is not clear about that point and I am not positive that I know why that was changed, except as told me by Mr. Adams a few days after the time.

Q. 76. Do you know of any subsequent receipt for the same amount; if so, when was it given, and where?

A. On October 18th, Mr. Adams brought me a receipt for a similar amount signed by William Means, and I surrendered to him the old receipt, to Mr. Adams, the one that I had had, either this one or the one like it. The probabilities are that I held this one, as it is marked copy, because I used to hold the duplicates and he the originals.

Q. 77. Did you see William Means then or about that time?

A. I don't remember whether I saw him on the 18th or not.

Q. 78. Are these the papers you referred to?

A. One of these is the paper referred to as the paper that Mr. Adams handed to me in place of the one that I had held.

Q. 79. Just state how these papers are identified and what they are.

A. They are identified by "B. Perin, sp. ex. T. M. A. Dep'n. Ashland, Ky., May 19, 1893. Signed by W. M. on Oct. 18, 1890."

As the receipts that the witness now holds in his hand
637 have already been introduced into the record by copy they will not be repeated here. They are dated October 18, 1890, and also as the other paper just before referred to for the same amount in which the date has been changed, and been introduced by copy into the record, it is not now repeated.

Q. 80. At the time that these receipts were signed, or at any time prior thereto, was anything said in the interviews with you, by William Means, or Evan Williams, or any party representing William Means, to the effect that the $136,000 receipt was to be signed on condition only that William Means would receive the $26,000 or thereabouts, that he would receipt to the administrators for, that was coming to John, Margaret and Mrs. Adams?

Objected to as leading, and suggesting to the witness the answer to be made.

A. There was nothing said that implied that the receipt for

$136,000 would not be signed if the money was not paid to Margaret A. Means, John Means and Mary A. Adams.

Q. 81. State whether anything was said at any time to you in any interview, by those parties, or any of them, to the effect that the $136,000 receipt would be signed if you, as administrators, would pay to William Means $25,000, or any part thereof?

A. There was nothing of that kind said to me or in my presence.

Q. 82. State whether anything was said in that interview at the time the receipts were signed, or at any one prior thereto, by William Means, or any one representing him, to the effect that the $136,000 receipt would be given to you, as administrators, in consideration that Margaret Means, John Means and Mrs. Adams would pay to William Means the amount of money they should get from the administrators upon his indebtedness to them or any part thereof?

A. There was nothing said to that effect or to indicate that one was conditioned upon the other, nor was there in fact any such understanding.

Q. 83. At the time these receipts were signed, had you any knowledge or notice that Mrs. Means, or the children of William Means, or any of them, were claiming to have any interest whatever under a trust deed, or otherwise, in the share of William Means in his father's estate? If you had, state what knowledge or notice you had?

638 A. I had at that time no knowledge nor any notice of any claim to an interest in the estate of Thomas W. Means by Mrs. William Means or her children.

Q. 84. When did you first learn that Mrs. William Means and her children, or any of them, were claiming any interest in the share of William Means in his father's estate as nearly as you can state?

A. I think it was at the time that the proceedings in the Green county court at Yellow Springs became public through the newspapers, and that I read it in the newspapers, in the summer of 1891, as — believe it was.

Q. 85. Did you know then the basis or terms of that claim until you received the notice or read it in the record of that case?

A. I knew nothing about it before it appeared in the newspapers in the summer of 1891, and the terms of it were learned from a copy of the record handed me by Mr. Hager.

Q. 86. When did you see that record; before or after this suit was commenced?

A. It was before this suit was commenced.

Q. 87. How long before?

A. It must have been two months before this suit was commenced. At my request Mr. Hager went to Xenia to obtain the records to ascertain the parties to the suit, we not being able to ascertain from the papers whether William Means was the only defendant in the suit. And even then it was in the interest of Margaret A. Means and John Means, and not in the interest of the estate of Thomas W. Means, that Mr. Hager made the trip.

Q. 88. State whether the receipt for $136,000 was signed by Wil-

liams Means in consideration of an agreement on your part and that of Mr. Adams as administrators with the will annexed of Thomas W. Means, to pay $25,000 to him, or any sum whatever; if so, state what the agreement was?

A. There was no agreement that the $136,000 receipt could be signed in consideration of a payment of $25,000 or any other amount.

Q. 89. State if, upon or before the execution of the receipt by William Means for $136,000, there was an agreement or understanding between you and William Means, or other person representing said Means, with the administrators of the estate of Thomas W. Means, or that John Means and Margaret A. Means or Mrs. Adams singly, or any one, or all together should pay or refund to William Means the amount they, or either, should receive, or other amount,
639 as a condition or consideration of the signing of the said receipt for $136,000 by William Means?

A. There was no such agreement or understanding.

Q. 93. State whether or not, prior to the commencement of this suit, after you were appointed administrator, you or Mr. Adams had consulted or conferred to any very great extent about the affairs of this estate with John Means? If so, to what extent had it been?

A. There was but little, if any, conversation between John Means and me about the management and control of the estate of Thomas W. Means, and such conversations, if any, were in the nature of a report of what had been done by father or by John Means. After that time he was in poor health and requested me not to bring business matters before him any more than was absolutely necessary.

Q. 94. In that connection, I will ask you how often, if at all, you saw John Means after you were appointed administrator up to the commencement of this suit and where he was, or whether at home or not?

A. I saw John Means only a few times after I was appointed one of the administrators, before this suit was brought. He was in Ashland for a day or two in July, and in October I went with him to Philadelphia to leave him under the care of a physician there and saw him again in the last week in December of that year, and then in November of 1891.

Recess until 1.15.

THURSDAY, *May 25th*—1.15 p. m.

Direct examination of E. C. MEANS continued:

Q. 95. State whether you and Mr. Adams, as administrators, or otherwise, or either of you, entered into any combination, fraudulent or otherwise, with William Means, to procure from him the $136,000 receipt that has been referred to, with a view of cheating Mrs. William Means and her children or any of them from getting anything that was coming to them or any of them, from the estate of Thomas W. Means, through William Means or otherwise; if so, state what combination or arrangement was made?

A. We did not enter into any such arrangement or combination.

Q. 96. State what the paper is you now hold in your hand?

A. This is "Exhibit 30, Cin'ti, March 10, '93. B. Perin, sp. ex.," receipt from William Means to E. C. Means from John Means, dated at Ashland, Ky., 23rd of October, 1890, for certain certificates
640 of stock and receipts that were handed to me on that date, and the memorandum which is a copy of the account of the Metropolitan National bank against William Means. The certificate of stock and the two receipts for payments on subscription to capital stock of certain company is in my handwriting excepting the signature of William Means at the end of the receipt. The copy of the memorandum is in the handwriting of William Means. The receipt for the certificates of stock in the Roan Mountain Steel & Iron Company, Mt. Auburn Cable Railway Co., Athens Mining & Manufacturing Company, and the two receipts for payments on subscriptions to the capital stock of Covington Transfer Railway Company, two receipts for payments on subscription to Manufacturers' Land & Improvement Company of Covington, Ky. is for the certificates handed to him on that day. The memorandum of the account of the Metropolitan National bank, was, as I supposed at that time, to be a receipt from William Means for the notes turned over to him, but I found that after he left the room that although he had copied he had not affixed his signature to the form of receipts for those notes, but they were handed to him on the same day as the certificate; that is, the 23rd of October, 1890.

Q. 97. These were the notes amounting in the aggregate to one hundred and twenty-five thousand and some odd hundred dollars that were taken by John Means when the $125,000 was paid to the Metropolitan National bank.

A. I presume so. I found the notes among father's papers and on the day that this paper was signed, William Means came to me and said that he had receipted for a $136,000 and he was now entitled to these certificates and stock and receipts and to these notes, and the statement of the notes includes the interest on the notes, and also, then, there is a deduction of credit by rebate interest on the notes, which left a balance of $125,911.74.

Q. 98. That is the way the interest stood up to that date or at the time they were taken from the bank. I presume at the time they were taken from the bank. I found these notes and memorandum that was given, I presume, to John Means of the indebtedness that William Means owed, and that memorandum is one this is a copy of—this last page of the copy.

Q. 99. Have you any other papers or statements of account bearing upon these claims; if so, just state them?

A. I have some memorandums here that I made at the
641 time that Mr. Adams and I compared the copies of Mr. McIntyre with the books of Thomas W. Means, and I will.

Q. 100. Well, did you find these copies of the accounts introduced by complainants, of Mary A. Adams, Margaret A. Means, John Means, and Mrs. Culbertson, deceased, correct?

A. We found some errors in them.

Q. 101. Can you state what the errors were?

A. I can state what we found.

Q. 102. Proceed.

A. The account filed by Mr. McIntyre in the copy of the ledger account of John Means on page 19 of the ledger of Thomas W. Means the copy has a debit on July 29th, 1864, to Thomas W. Means May 23rd, referring to 287 of the journal $16,000.00, the ledger of Thomas W. Means shows that amount to be $1,600. The entry in the journal shows the amount $1,600.00 on page 287.

The ledger, page 40, William Means' account, dated February 6, 1855; the copy has to Dugan & McCoy, page 7 of the journal, William Means on the debtor $50.00, while the ledger shows on page 40 that the debit should have been $500.00, and as the page in the ledger under date of April 9, 1870, the ledger shows that this should have been charged on March 28th, which is omitted in the copy.

On page 223 in the ledger in William Means' current account, the date November 19th in the copy should be November 17th as on the ledger. The amount of the entry is $1,620.00.

Margaret A. Means' current account, ledger page 295, is a credit on February 22, 1888, on the copy. It should have been 21st. The amount is $18,853.13.

The account of Mrs. Jane Culbertson on ledger page 290, dated September 18, 1876, the copy is, "Paid Ashland National bank $6,800.00." The item should be "Bank of Ashland stock."

1867, July 26th, the copy has, "To Ashland National Bank stock, $10,200 00," and the ledger shows it to be "Bank of Ashland stock."

In 1870, June 6th, the copy has "Ashland National bank," when it should be "Bank of Ashland."

In 1872, December 9th, the copy has "T. W. Means," where it should be "T. W. Means, Junior."

January 4th the copy has "To K. I. C. and M. F. Co., $1,600.00." The ledger has it "Means, Kyle & Co."

1874, July 29th, "Clinton iron works, $6,000.00." The ledger has it "Clinton Iron Works stock."

642 In 1872, December 9th, the copy has "By T. W. Means, $6,310.55." The ledger has it "By T. W. Means, Jr."

In 1879, July 22, the copy has "By Culbertson, Means & Co., $19,946.00," and it should be $19,946.10.

In Mary A. Adams' ledger account, page 16, the copy has $1,865.00. January 5th, "To William Means, $150.00." The ledger has it "To Thomas W. Means."

On August 18, 1874, "To Thomas W. Means, $800.00." The date should be July 18th.

In 1889, August 2nd, the copy has "1889, August 2nd. To Ashland National bank, $7,350," on the debtor and credit side. The date should be 1887 for that amount in place of 1889.

In the copy of the journal in which the name of John Means appears I find the following matters:

In 1863, January 9th, John Means to Thomas W. Means, the copy shows the amount charged to John Means as $34.00, when the journal shows it to be $34.50.

In 1871, October 20th, the item of John Means, "To sundries," the copy has "Ashland National bank," when the journal has "Bank of Ashland."

1872, January 9th, sundries, T. W. Means, Jr., $56,250.00, the copy has "T. W. Means," and

July 14, 1873, the journal has "C'k No. 1261 on Second National bank, $4,000.00." The copy has it "For c'k No. 1261 on the Second and A. T. Bank of Ironton, for dividend of 8 %, $4,000.00."

July 12, 1873, the entry should be "John Means to dividend account for check to L. C. Robertson in payment of 15 % dividend Portsmouth Gas Company stock, $232.50." The copy has "July 12th, John Means, Portsmouth Gas stock, for check on L. C. Robertson in payment of 15 % dividend Portsmouth Gas stock."

On December 19, 1873, the journal has "Sundries, to Ashland National bank, $37,533.33. John Means for January 20th, J. L. Hills, for Norton Iron Works stock for Black, $200.00. David Sinton, for September 11th, to pay for Cal. Tule bond, $333.33." The copy has "Sundries, to Ashland National bank, $37,533.33. John Means for January 20th, J. L. Hibbs, for M. J. Winkler, stock for blacksmith, $200.00. David Sinton, for stock, to pay for Cal. Tule bonds, $37,533."

January 29, 1874, the journal has "Sundries, Norton Iron Works stock, $30,000.00."

In the foot-note appears: "N. B.—This leaves belonging to Thomas W. Means 23 shares, $23,000.00. See certificate
643 No. 80." The foot-note copy says: "Leaves balance to William Means 23 shares, $23,000.00. (See certificate No. 80.)" And then the amount, $30,000.00, opposite Sinton Iron Works stock, is omitted.

Journal B, February, 1874, the journal has "John Means to interest for cash by Sinton, 22nd March, 1873, $205.94." The copy has "$305.94."

On Journal A, 398, in the credit account of John Means, as copied by McIntyre on December 9, 1892, the journal has "Thomas W. Means, Junior, to sundries, $31,552.77." The copy has "Thomas W. Means, to sundries."

On Journal B, page 110, 4th September, 1880, "Sundries to John Means, $1,339.36. M. A. Adams for this amount, $202.52. M. A. Means for this amount, $968.65. Ashland National bank, $168.19." The foot-note in journal is: "Above payment made to bring these acs. to even amounts." The copy has it, the foot-note, "To bring these accounts on amounts."

On Journal 1, page 170, 2nd July, 1887, the journal has "Sundries to John Means, $400.00, expense for paid on trip to California to see about Suttler Company bonds, $219.55. Ashland N. B. for deposit, cash, $180.45." The copy has it "For our trip."

On Journal B, page 184, April 21, 1888, the journal has a foot-note "See letter of John Means 16th instant." The copy has "S. F. Hunt. (See letter of John Means of 16th instant.)"

John Means' current account. The item of 5th November, 1888, page 193 journal, has no date in the copy.

On page 196, December 20th, John Means' current account, to bills receivable, $6,690.00 "For amount to credit of note No. 215, William Means, due 15th February, 1888. The copy has 1886. 1889, February 26th, page 200 journal, John Means' current account to bills receivable, $2,625.00." The copy has it of date January 26th.

1888, February 17th, journal, page 179. Sundries. To John Means' current account, $12,500.00. Ashland National Bank stock for 35 shares, certificate No. 179, from William Means, $3,500.00.

Norton Iron Works stock for 9 shares, certificate No. 437, from William Means, $9,000.00. The copy has Ashland National bank instead of Ashland National Bank stock, and uses the word "certified" in place of the word certificate.

Page 200, February 29, 1889, the journal has 220 shares in the name of William Means. The copy shows the number of
644 shares to be 221, the date to be January 29th.

Journal B, page 25, on account of John Means, October 22, 1874. John Means to Ashland National bank for 9 U. S. bonds 1–20–$900.00. The copy has $920.00.

Journal B, page 39, November 17, 1875, the foot-note is in your letter omitted in the copy. It reads as follows: "The deed to John Means is for services rendered in attending to my business. Thomas W. Means." It is in the handwriting of Thomas W. Means, and signed by him, and refers to the item of November 17, 1875, "Sundries to Catlettsburg real estate, $1,500.00."

John Means for deed to lots 16, 25, 29, 41, 55, $1.00.

Profit and loss for balance of account, $1,499.00.

Journal B, page 100, 9th April, 1880.

"John Means to Ashland National bank for $35.00 on account for Princess Furnace debts, $8,200.00." The copy has it "For his Princess Furnace debts."

Items of William Means' current account: Journal A, page 295, January 5th, 1865, "Sundries, to Means, Kyle & Co..... $11,885.45

John Means, for balance of your stock in Pine Grove to make 80 per cent. 917.75

To William Means for balance your stock..... 917.75

William Means for this amount on account..... 10,000.00

Thomas W. Means for 1 bbl. flour, and 3 beef bills for John Morgan, $11.90, $11.00, $27.00..... 49.90."

The copy has "Sundries—to Means, Kyle & Co., $2,885.40, John Means, for balance of your stock in Pine Grove to make 80 per cent., $917.75."

William Means, for balance of your stock in Pine Grove to make 80 per cent., $917.75. This amount on account $1,000.00. Thomas W. Means, etc., (same as above). The difference in William Means' account is $9,000.00 in the copy.

Journal A. Page 398, December 16th, 1872. "Sundries to Ashland National bank, etc." The copy has Mary A. Means instead of Mary A. Adams.

The item of January 29th, 1874, "Sundries to Norton iron works, stock, &c." The foot-note has "This leaves belonging to Thomas W. Means, 23 shares, $23,000.00. (See certificate No. 80.)" The copy has it "This leaves belonging to *the* W. Means 23 shares."

Journal on page 100, 24th March, 1880, "Sundries to Norton Iron Works stock $5,000.00."

William Means for one share transferred by John Means,
645 Mather's stock $1,000.00. The copy has it, "Mother's wish $1,000.00."

Journal B, page 200, March 8th, 1890. Ashland National bank to William Means' current account, for John Means' check B. & C. F. T., $10,275.00. The copy has it $10,270.00.

195, 10th December, 1888, bills receivable to William Means' current account for note dated 3rd instant, at 1 day $2,713.88. The copy has John Means.

Q. 103. At or before the signing of the $136,000 receipts did William Means, or Evan Williams, or any one representing William Means say or suggest anything meaning to you that the notes aggregating $280,000 or thereabouts held by the estate of Thos. W. Means, made by William Means were not *bona fide* or any way other than valid—if so, just state what was said?

A. No one ever made such a statement to me, and I never received any intimation from any one that the notes were not *bona fide* and given in good faith.

Q. 104. Did you have any belief or suspicion or reason to believe, or suspicion that there was any fraudulent purpose connected with the execution of those notes; any of them?

A. I did not.

Q. 105. Did you know, suspect, believe, or have reason to suspect or believe that the object or purpose of giving these notes or any of them, was to cover up the interest of William Means in his father's estate so that it could be reached by his creditors, or any of them, or by his wife, one or any of them. If so, just state what knowledge you had in that respect, or information or suspicion?

A. I did not understand that it was done for the purpose of covering up his interest in the estate other than any one giving a note would be bound for payment of it, or as a set-off against him.

Q. 106. State whether you knew, believed, or had reason to know or believe, that those notes or either of them, were wanting in a full consideration for the amount expressed on their face.

(So much of the question is objected to as asks for witness' belief.)

A. I had no reason to believe that they were wanting in valid consideration. I believed that there was a full consideration.

So much of the answer objected to as states the witness' belief about the consideration, as mere opinion formed without any absolute knowledge.

646 Q. 107. State whether there was anything said about William Means or any one else at the signing of these receipts on the 16th of October or any other time that suggested that the

object in giving those receipts, or either of them was to advertise the family of William Means or any of them, or any one else, or to hinder them in getting any share in the estate of your grandfather; if so, state what?

A. There was nothing said or suggested.

Q. 108. Did Mr. Baker and Mr. Williams, or either of them, read those receipts, given on the 16th of October by William Means; if so, state the fact.

A. I believe they did, I believe Baker did, and I think Evan Williams did.

Q. 109. Did they express any disapproval or opposition to them, or either of them?

A. I do not know of any opposition being expressed further than at the first they thought it would be a simpler matter to make all receipts signed by William Means in one receipt—all of the receipts that were evidence signed by William Means in one receipt—and Mr. Adams objected to that, and I do not think there was any objection other than in separating the transactions as they were separated.

Q. 110. State what the paper you hold in your hand is.

A. This is a letter dated Ironton, Ohio, October 18th, 1890, addressed "My Dear Mr. Hager" and signed by Evan F. Williams.

Q. 111. How many sheets is it written on?

A. On three sheets.

Q. 112. How is it identified?

A. Identified, "Cincinnati, April 6th, 1893. B. Perin, sp. ex." Identified on the back by Exhibit 19.

Q. 113. Where did you get that paper, and when first?

A. This paper was handed to me by Mr. Hager in October, 1890. It has been in my custody ever since, I guess, until it was put in evidence in this trial.

Q. 114. I will ask you if you are familiar with the handwriting of William Means?

A. I am.

Q. 115. Have you examined this handwriting, the body of the writing?

A. Of this letter, I have sir.

Q. 116. I will ask you in whose handwriting that is?

647 A. I believe it is in the handwriting of William Means, excepting the signature—"Most truly yours," "Evan F. Williams."

A. It looks as though there was an attempt to disguise the handwriting.

Q. 117. As the contents of this paper have been already introduced, and put into the record it is not repeated here.

Mr. ANDERSON: And now in connection we will offer a duly certified copy of the record of a mortgage executed by William Means in Ironton, I presume, it is in Lawrence Co., on the 18th October, 1890, and the acknowledgment thereof; and ask the examiner to make it a part of this record as excepting this.

Copy of the mortgage and acknowledgment and certificate is as follows:

Know all men by these presents that William Means of the county of Greene and State of Ohio in consideration of twenty-seven hundred and forty-six $\frac{66}{100}$ dollars to him paid by Evan F. Williams, of Ironton, Ohio, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey to the said Evan F. Williams, his heirs and assigns, forever the following-described real estate, situated in the county of Boyd in the State of Kentucky, and in the city of Ashland and bounded and described as follows, viz: Lots No. 1, 2, 3, 7, 8, 9, range 6, west, being the same premises described in a deed to Thomas W. Means in vol. 10, pages 478, 479, of Boyd county records, and in all my right, title and interest in all the following shares of stock belonging to Thomas W. Means at the time of his decease: In Kentucky Iron, Coal & Manufacturing Company; in Ashland National bank, Kentucky; in Means, Russell Iron Company; in Little Miami Railroad stock; in Means, Kyle & Company; in Roan Mountain Steel & Iron Company; in Portsmouth Gas Light; in Norton Iron Works stock; in Ashland Coal & Iron Railway Company; in Low Moor Iron Company; in Second National Bank of Ironton; in certain bonds of Mount Auburn Cable Company; of Eureka Iron Company; in the promissory notes of Thomas A. Mack, S. S. Savage and Richard Mather, with all collaterals securing the same, in all the shares of the Metropolitan National Bank stock and all other collaterals and dividends due and payable upon the same held by the estate of Thomas W. Means, deceased, and all dividends which may become due and payable upon said stock and collaterals, and all the estate, title and interest of the said William Means either in law or equity in and to
648 the said premises; together with all the privileges and appurtenances to the same belonging to have and to hold the same to the only proper use of the said William Means, his heirs and assigns forever, and the said William Means for himself and his heirs, executors and administrators, hereby covenants with the said Evan F. Williams, his heirs and assigns, that he is the true and lawful owner of the said premises, and has full power to convey the same, and that the title so conveyed is clear, free and unincumbered; and, further, that he will warrant and defend the same against all claim of all persons whomsoever provided, nevertheless, that whereas said William Means has executed to Evan F. Williams his promissory notes of even date herewith for the payment of twenty-seven hundred and forty-six $\frac{66}{100}$ dollars in one day after the date thereof with interest from date. Now if the said William Means shall pay said sum of money to Evan F. Williams or his assigns when the same becomes due then this mortgage shall be void, otherwise to be and remain in full force.

In witness whereof the said William Means, who hereby releases all right and expectancy of dower in the said premises, has here-

unto set his hands this 18th day of October in the year of our Lord, one thousand eight hundred and ninety.

WILLIAM MEANS.

Signed and acknowledged in the presence of—
HARRY E. WILLIAMS.
A. J. BRUMBERG.

STATE OF OHIO, }
County of Lawrence, } *ss:*

I, Harry E. Williams, a notary public, do hereby certify in and for the county and State aforesaid, that this instrument in writing from William Means to Evan F. Williams on the — day of October, A. D. 1890, was produced to me in said county and State by William Means, the grantor, and acknowledged by William Means to be his act and deed.

Given under my hand and seal of office this — day of October, A. D., 1890.

[SEAL.] HARRY E. WILLIAMS,
Notary Public, Lawrence County, State of Ohio.

STATE OF KENTUCKY, }
Boyd County, } *sct:*

The foregoing mortgage from William Means to Evan F. Williams was on the 22nd day of October, 1890, lodged to be and
649 is together with the foregoing and this certificate duly recorded in my office.

Witness my hand as clerk of the Boyd county court this 23rd day of October, 1890.

G. F. FRIEL, *Clerk.*

A copy.
Attest: G. F. FRIEL, *Clerk,*
By C. L. WILLIAMS, *D. C.*

Endorsed as follows: Book 8, pages 113, 114, 115. A copy of mortgage to Evan F. Williams.

The introduction of the mortgage is objected to because it is a transaction between Evan Williams and William Means, and has no connection whatever with the issues in this case, and is incompetent for any purpose in this connection.

Q. 117. On the 18th of October, or thereabout, did you see William Means at Ashland, or elsewhere, after the 16th of October?

A. I saw him on the 23rd, and may have seen him between that and the 16th. I do not remember now.

Q. 118. Did he, when you saw him on the 23rd, at any time after the 16th make any demand on the part as executor or otherwise for any sum of money whatever; if so, state the fact and how much?

A. I do not remember that he did.

Q. 119. Did he ever at any time after the 16th of October prior to the filing of the bill in this case make any demand upon him for

the $26,000 guarantee of the amounts owing by him to John Means, Margaret Means and Mrs. Adams, or did any one for him make such a demand?

A. They did not, nor he did not.

Q. 120. Had you heard at the time of the signing of the two receipts of the 16th of October, 1890, that Mrs. Means was about to assert any claim against William Means of any kind; if so, what did you hear, and what was the character of the claim?

A. As early as 1889 I had heard that Mrs. Means was threatening to sue for divorce, but I did not hear of any in a financial way that she was asserting further than what might follow from such a suit.

Q. 121. Well, what, if anything, did you hear was the character of the claim that would follow?

A. I do not know as I heard of any claim as against William Means, but I heard that she was threatening to sue others for alienating his affections.

Q. 122. Then, I understand that the character of the claims,
650 or litigation that you had heard of was against the persons and not against the estate of Thomas W. Means?

(Objected to because leading.)

Q. 123. State whether it was against a person or his estate?

(Objected to as leading.)

A. I never heard or understood before the signing of this $136,000.00 receipt that Mrs. Means was asserting any interest in the estate of Thomas W. Means.

Q. 124. State whether there was any balance on the current account of William Means upon the books of Thomas W. Means that in the appraisement of the assets of the estate was omitted in the appraisement; if so, state what or how much, and why was it omitted?

A. At the time the appraisement was made I was under the impression that the current account of William Means on the books of Thomas W. Means was balanced. I have since ascertained that there is a balance due from you to the estate on that account. The amount due from William Means to Thomas W. Means on the current account at that time was $250.08, and the amount is still due to the estate.

Q. 125. Do you know why the certificates of stock in the Metropolitan National bank were not delivered to William Means when you delivered the other securities that they referred to?

A. The certificates of stock of the Metropolitan National bank were among the papers of Thomas W. Means, and at the time that the notes of William Means to Thomas W. Means were handed to him it was done by Mr. Adams, and not until the next time that I looked through the papers of the estate did I know that the certificates had not been handed to William Means. I had thought until then that they had been handed to him.

Q. 126. Were you ever present at any of the directors' meetings

in Ashland, at which Thomas W. Means was after he moved to Ashland?

A. I think I never was.

Q. 127. Where were you from the time your grandfather moved to Ashland up to his death, in a general way?

A. I was home on vacation at the time he moved here, I think, from Marietta College. I was at the Marietta College until the summer of 1884, at the Institute of Technology at Boston until 1887, coming home for short vacations and going to other places during the vacation. From 1887 until January, 1890, I lived in Lowmoor, Virginia, coming home on short visits.

651 Q. 138. In answer to Q. 137 in the deposition of Mr. Williams, he says: "Agreed William Means should sign it. But before we agreed to that, Cook Means said that he represented his father, John Means, and also Margaret Means—that they did not want any money which they individually let William Means have. I asked Cook Means if he would let William Means have that if they did not want it, and he said they would. Cook started to figure as to how much William Means got individually from Margaret Means, John Means and Mrs. Adams, as I recollect it." This refers to the time of the meeting in the hotel prior to the signing of the $136,000.00 receipt on the 16th October. I will ask you if the statement of Mr. Williams is according to the fact; if not, state what the fact was in this respect.

A. Either Mr. Williams or Mr. Baker asked if that money would be returned to William Means if he receipted to it for the administrators, and ordered it paid to John Means and Margaret Means, and I replied as I have heretofore testified.

Q. 139. State whether or not John Means, Margaret Means and Mr. Adams are now claiming the right to have the sums covered by the $26,000.00 receipt paid to them under the orders and assignments of the 31st of October referred to?

A. Margaret Means is. I understand from John Means that he is. I cannot speak for Mrs. Adams, but I presume she has.

Q. 140. You know nothing to the contrary as to Mrs. Adams?

A. Why, I think she has.

(Answer objected to so far as he thinks.)

Q. 141. State whether or not they were making that claim prior to or at the time of filing the answer in this case?

A. It was before that time I know that Mr. Adams wanted that money.

(Question and answer objected to as irrelevant and incompetent.)

Q. 142. What do you know about the others?

(Same objection.)

A. I know that they wanted to get theirs.

Q. 143. Mr. Williams adds — that answer: "Cook Means started to figure as to how much William Means got individually from Mar-

garet Means, John Means and Mrs. Means, as I recollect it,
652 the amount figured up. His first statement was about $16,000 or $18,000. I then told Cook, 'Cannot you swell it up?' That is the language I used, 'We are to get that money, and make it as much as you can.'" State whether Mr. Williams used those remarks in quotations; if not, state what was said in that respect, if anything.

A. On the 16th of October no such remark or similar remark was made. On the 4th of October at the time that they first asked for information, at the time William Means and Evan Williams first asked for information, as to the amount due to Margaret Means and John Means the statement was made there by Evan Williams and William Means that they wanted to make the amount as large as possible, and I told them at that time that the only way in which the amount could be increased after I found out from the books what the amount actually was, would be by these personal expenses of John Means that had not been charged to William Means on John Means' books and that amount I did not know at that time and learned later on the same day.

Q. 144. When you first made a computation of the amounts due, state whether the aggregate was as small as $18,000.00 or thereabouts, or what was it?

A. I think probably that the aggregate was all that I gave to them on the 16th excepting perhaps the note of William Means to Margaret Means, which I did not recall in the few minutes' conversation we had on the 4th of October.

Q. 145. Then, in the computation that you had on the 4th of October the note to Margaret Means to William Means was not included?

A. I think not. That is my recollection. I found when I got home—there was no computation made in figures. It was only the verbal statement of October 4th.

Q. 146. In answer to Q. 150 in Williams' deposition the question is, "Did they then pay to William Means the $26,000?" The answer is, "No, sir. Cook Means and I had then discussed the manner of payment. I did not know just how convenient it would be to make these payments, and Cook Means thought that he did not need to pay this all at once—this $26,000.00. It might be inconvenient to pay it that time. He spoke of it and said it would be all right." I will ask you if it is a fact that at the time of signing the receipts on the 16th of October you had frequently, or often, or at all, discussed the manner of payment; if so, state the fact?

A. The manner of payment to John Means and Margaret
653 and Mrs. Adams was not discussed before October 16th.

(Answer objected to because not responsive to the question.)

The question is about payment to William Means, and not to Margaret Means, John Means and Mrs. Adams.

Q. 147. Last question repeated.

A. We never discussed any payment by the administrators to

William Means. We did talk about a payment to Margaret Means, to John Means and Mrs. Adams.

Objected to because the question is, Did you, the witness, and not as executor or otherwise, and as not being responsive to the question. The question is, "Did you have any such talk with Evan Williams, personally?"

(Witness continues): So far as I was personally concerned I made no promise to pay any amount to William Means, or to any one for him in person.

Answer objected to as irresponsive because it does not answer whether he had any conversation. The question does not ask if he paid or agreed to pay the money, but asks if he had any such conversation or discussed the matter.

(Witness continues): There was no discussion, no conversation in which the question of a payment by me personally, was discussed.

Q. 148. Was there any such conversation or discussion in which a payment by you as administrator of Thomas W. Means, or by you and Thomas W. Adams, as administrators, was considered—to William Means?

A. There was none.

Q. 149. Was there anything said to the effect that it might be inconvenient to you as administrators—you and Adams as administrators—to pay $26,000.00, or any part thereof, to William Means at that time or any other time?

A. There was nothing.

Q. 150. In answer to Q. 221, which is as follows: "Q. Well, why? Let us understand. Why, in a transaction of that magnitude, where it is claimed that $280,000.00 had been advanced, and was evidenced by note, and that there was left due $136,000.00. Now let us understand why it was not examined into?" Mr. Williams answered it as follows: "We could not make any final settlement at that time. It was impossible to do it. We had turned over these securities the face value of which amounted to over $250,000.00, John Means had received power of attorney to sell these securities and convert
654 them into cash. Up to that time I had not given William Means or myself a statement of the amount of cash realized upon these securities, because he states he was waiting until the storm was over." Was there anything said in the interviews of the 4th of October or 16th of October by any persons present about making a final settlement and that it could not be made for the reasons stated in the answer of Mr. Williams that I have read? If so, state what was said, or reasons similar to those?

A. I do not remember that there was any talk about a final settlement. I think that the talk was only in the amount of what proportion this amount bore to what we estimated.

Q. 151. Which amount?

A. The difference of the $136,000.00 and the $26,000.00 and the total amount we would probably realize.

Question and answer objected to because it is not claimed by Williams in his testimony anywhere that that question was discussed, anything about the settlement of $280,000.00 on the 4th of October, 1890, or on the 16th of October, 1890, at the hotel, as detailed by the witness.

Q. 152. State if there was any reason why, at that time, there could not have been a full payment and settlement of the demands of the executors against William Means, and whether or not there was such a final settlement.

Question objected to because leading.

A. There was no discussion of the final settlement at that time, nor has there been since.

Q. 153. Does your answer refer to the final settlement of your accounts as administrators, or to your settlement with Mr. Means as an heir or a legatee under the will, and not to the question of his notes or indebtedness to the estate?

A. We made at that time a settlement of his notes to the estate.

Q. 154. And not of his share in the estate?

A. No, sir.

Q. 155. Did William Means ever tell you, prior to the signing of the $136,000 receipts on the 16th of October, whether or not his wife and children, or any of them, were wanting him to make a settlement on them or any of them of his share in his father's estate?

A. He did not.

Q. 156. Did you hear of any such desire on their part prior to that time, or at that time?

A. I did.

655 Q. 157. What was it?

A. Judge Whitaker came to my office in the Ashland Coal and Iron Railway Company building in February or March of 1890, saying that he wanted to see John Means. He and I were alone in the office. I told him that John Means was ill, was not in town, and asked to know what he wanted. He said that he was representing Mrs. William Means and her children. I asked him if he represented William Means and he said he did not. He said that he wanted to see John Means to see if a trust agreement could be made for the benefit of Mrs. Means and her children for—I don't remember how he worded it—for an interest in Thomas W. Means' estate. I asked him if William Means wanted such a matter fixed up, and he said he did not know what William Means wanted, that he did not represent William Means, and I then told him that it seemed to me that William Means was the only heir and as long as he was living and there was no other heir that such a proposition should come from him, and that we could not recognize them as entitled to any consideration except through him, and he wanted to see John Means in particular, and I told him I could not help him in seeing him.

Q. 158. Well, what did he say then; any more, in substance?

A. I don't remember. He staid there perhaps a half hour.

Q. 159. What time was that?

A. February or March.

Q. 160. Of what year?

A. 1890.

Q. 161. State whether you have stated the substance of all that took place between you and Mr. Whitaker at this interview?

A. I think that I have. I have given the main points. I have stated that it was distinctly understood between us then that he did not represent William Means, or did not know how William Means felt in the matter, and that he was not authorized to act for him, and that he seemed to think that John Means was the man to get after to fix the thing up.

Q. 162. Did you, after that date, or up to the signing of these receipts on the 16th of October, hear anything else than you have stated relative to that matter?

A. I never heard from that time, nor at that time, nor at any later time, until the Xenia decree, that William Means had ever agreed to that trust or to make a trust.

Q. 163. State whether up to that time, prior to the Xenia
656 decree, you had ever heard that the trust had been declared or existed?

A. I never did.

Q. 164. X Q. 604 of Williams' testimony is: "You were there making some arrangement with respect to this $26,000 transaction and the $136,000 transaction. How did it happen that you came away from there—you were the leading counsel there—and you cannot tell from whom you were to get that money?" The answer is as follows: "Why, I told you we were to get it from the administrators, and if they did not pay it over—I do not wish to bind Mrs. Adams with this matter because that was a matter that came up afterwards so far as she was individually concerned—but so far as her amount was concerned, if she did not pay it, John Means and Margaret Means were to get it from the administrators and pay it over. That was our understanding, and as I told you, all those details you are talking about were not discussed. You are raising questions that never were put." I will ask you if the facts stated in the answer that I have read with reference to John Means and Margaret Means, that they were to get from the administrators and pay over the $1,650 William Means owed Mrs. Adams, in the event Mrs. Adams would not give it to William Means or would not consent that he have it, was entered into—any such arrangement was entered into at that time or any other time.

Counsel for complainants asks counsel for defendants if the quotation given the examiner from the deposition of Williams is not in the cross-examination by the counsel for defendants of said Williams.

Mr. ANDERSON: To be sure it is. The number of the question answers that.

A. There was no such arrangement entered into, or understanding existing.

Q. 165. In answer to X Q. 645, wasn't there anything said about whether there was enough in the estate to pay $136,000 and $26,000? The answer is, in Mr. Williams' deposition: "Nothing, until after we gave the $26,000 receipt." State whether the fact to which Mr. Williams testifies there is as he states it, and if not, state the fact.

A. The fact is not as Mr. Williams states it, but as I stated it heretofore in this examination, that it was at the meeting in the hotel, in response to the question of Mr. Baker, that I made the estimate of the final amount that would probably be realized from the assets of the estate, and the proportion thereof for each legatee.

Q. 166. In answer to X Q. 502, Mr. Williams has made a
657 very long answer, and I will call your attention to the substance of it. The question is, "I will call your attention, Mr. Williams, to the first meeting in Ashland, when you and others—Mr. Hager and Mr. Cook Means, and at any rate, part of the time Mr. Adams—had some talk about this $136,000 receipt and the $26,000 receipt. State briefly and in substance what took place at that first meeting as nearly as you can state it." Mr. Williams starts his answer as follows: "Well, Mr. Baker was there. We had executed deeds of trust, or a deed of trust to the children before that time." I will ask you if, in the interview on the 4th of October or 16th of October, or any other time, that Mr. William Means or Mr. Williams, representing Mr. William Means, or claiming to represent him, made any statement that a deed of trust had been executed to the children of William Means of his interest in the estate and that the children were pressing for a settlement and whether a question came up as to whether you would sign that receipt or carry out the settlement upon the children. Was anything of that kind discussed or suggested?

A. Never by William Means or any one representing him.

Q. 167. State if William Means at any time ever made complaint to you, as administrator or otherwise, that you had neglected to collect $800 or $1,200 of dividends of the Metropolitan Bank stock that you should have collected.

A. He never made any complaint to me.

Q. 168. Did he ever make any demand from you for money on account of such claim?

A. He never did.

Q. 169. Can you state whether there were any dividends upon those stocks, that stock, at the time you turned the notes over to him—the $280,000 notes and the other notes that were not paid or collected by you as administrator?

A. There were some dividends from the—I don't know whether the receiver or agent of the shareholders at that time—agent of the shareholders, I suspect—of the Metropolitan National bank, notifying the administrators of the estate of Thomas W. Means that there was a dividend of I don't remember the per cent., but it was 1 or 2 per cent. due them. And also one to John Means notifying him that there was something due him. Mr. Adams and I discussed the matter as I remember, and my idea was that these certificates

of stock were collateral placed to protect William Means'
658 notes and that without an order from him to collect dividends, it was a question as to whether we had a right to do so, the certificates being transferred in blank and for that reason I did not feel, as administrator, that we ought to collect those without full authority from him.

Q. 170. Mr. Adams, in his deposition, was not clear as to whether the certificates of the Metropolitan National Bank stock to John Means, or to Thomas W. Means, as the case may be, were transferred in blank or not. Have you examined them, and can you state?

A. I have. They are transferred in blank.

Question and answer objected to as irrelevant and incompetent and having nothing to do with the case.

Adjourned to Friday, May 26th, 1893, at 8.30 a. m.

FRIDAY, *May 26th*, 1893—8.30 a. m.

Present: Mr. Whitaker for complainants.
Messrs. Anderson & Hager for defendants.

Direct examination of E. C. MEANS continued by Mr. ANDERSON:

Q. 171. In the account of Margaret Means against William Means I see a credit of $45,000. What does that refer to?

A. That refers to the notes of Thomas W. Means in her favor dated the 3rd of December, 1888, at one day, for which she was to pay that amount for William Means to the executor of A. Labrot, deceased, as trustee for M. E. Seignouret and as trustee for Countess d'Adhimar.

Q. 172. From whom came the $45,000, if you know?

A. That note was paid by John Means from the funds of Thomas W. Means as attorney of Thomas W. Means.

Q. 173. State whether, if you know, that money with the interest upon it was ever paid for the benefit of William Means; if so, how and where and when.

Objected to as leading.

A. I know the disposition of that money. On or about the 22nd of August, 1890, as agent for Margaret A. Means I paid by a draft on her account on the Ashland National bank the amount of $70,000, a portion of which amount was made up by the proceeds of the notes of Thomas W. Means.

Q. 174. To what extent?

A. To the amount of $45,000.

Q. 175. There was some interest on it?

A. No, there was no interest on it.

Q. 176. When John paid it?

659 A. No. There was interest on it paid to her but none of that interest was paid to Ramsey, Maxwell & Ramsey.

Q. 177. In the payment that was made upon the Labrot matter,

do you know the source of the residue of the fund other than the $45,000 that you have stated; if so, state.

A. The only — of which I have personal knowledge, except as derived from the books, is the item of 1890, August 22, 10 Ashland Coal & Iron Railway Company bonds, $1,000 each, $10,000.

Q. 178. You say "Derived from the books." Have you any knowledge of the other items derived from the books?

A. Why, I made this account from her books, the books of Margaret A. Means.

Cross-examination by Judge WHITAKER:

X Q. 179. Mr. Means, I believe you are a son of John Means?

A. I am, sir.

X Q. 180. One of the executors of the will of Thomas W. Means, who was your grandfather?

A. One of the executors with the will annexed.

X Q. 181. When did you take up your residence permanently in Ashland?

A. About the middle of January, 1890.

X Q. 182. Before that time you knew very little of the business of your father, or your grandfather did you?

A. I knew very little of the business of my grandfather, I knew some about the business of my father.

X Q. 183. Suppose Mr. Means that in the final determination of this case it should be determined that your father had no legal right to dispose of your grandfather's property to raise the money for the purpose of paying William Means out of his difficulty at Cincinnati, would that affect your interest in your father's estate at his death, if you should outlive him?

A. It seems to me that that question jumps a good ways to get a conclusion.

X Q. 184. Answer it please?

A. If the suit now pending should result in the loss to the estate of Thomas W. Means of $135,000.00, and that amount should be derived later from John Means or his estate for the benefit of the estate of Thomas W. Means I would expect to be a loser in his estate to some extent.

660 X Q. 185. I suppose that the amount paid out by your father paid out by authority or not, should be adjudged an executed gift to William Means; what effect would it have upon John Means' inheritance in your grandfather's estate? Would it increase it or lessen it?

(Question objected to as argumentative.)

A. It would lessen it, I presume.

X Q. 186. William Means, I believe, is your uncle and one of the heirs of Thomas W. Means?

A. Yes, sir.

X Q. 187. How many heirs are there to that estate?

A. There are five.

X Q. 188. Will you name them?

A. John Means, William Means, Mrs. Mary A. Adams, Miss Margaret A. Means and Thomas M. Culbertson, through his trustee.

X Q. 189. You have spoken of a meeting on the 4th of October, at the office of the Ashland Improvement Co. Who brought about that meeting?

A. My recollection as to how that meeting occurred is, that John Hager, Thomas M. Adams, Evan Williams and William Means came in there to see me.

X Q. 190. Did Thomas M. Adams come into the office with them? Is that your recollection?

A. That is my recollection.

X Q. 191. The first you knew then of their being here on business connected with the estate, was their appearance in your office?

A. That is as I now remember it.

X Q. 192. About what time in the day was it that they came in there?

A. I think it was between four and half past five—say between four and six. It was nearly supper time.

X Q. 193. How long did they remain?

A. Not over fifteen or twenty minutes, I guess, or half an hour.

X Q. 194. The talk then was very brief on the subject of the settlement, was it?

A. Yes, sir.

X Q. 195. No details mentioned particularly—only in a general way. It was discussed, was it?

A. I think that. I do not know hardly how to answer that question—what do you mean by details?

X Q. 196. Any projected settlement, or anything of that kind?

A. They were to come back that night. A settlement was to be made that night.

661 X Q. 197. At that time, nearly everything that was done was the revocation of that revocation?

A. And the requests for the amounts due to the other parties, and the avowed intention to give an order on the estate for those amounts?

X Q. 198. Is that all you recollect that took place?

A. Excepting so far as I have testified before.

X Q. 199. Mr. Means, I rather you would answer what took place in answering to my questions, rather than answering in a general way as to what you have testified before—say what, if anything, took place there?

A. Well, I will answer that over again. The parties came in, and there seemed to be an understanding existing among those in there, that William Means should revoke the revocation of July 28th, and that he wanted to ascertain the amounts that were due to his brother and sisters, and I undertook from memory to give a list of the amounts as I then could recall, and agreed that they should ascertain from the books of John Means and Margaret A. Means, the amounts that he was charged on their books, and they signified, Evan Williams and William Means—that they wanted to pay all that could be called indebtedness to John Means, Margaret Means

and Mrs. Adams. I told them that the only additional matter other than what was then charged, that I could, at that time think of, was the personal expenses, such as traveling expenses, telegrams, etc., in the books of John Means, and which were in his cash book, and not then charged against William Means, but charged in the expense account of John Means. I was asked if there was anything else—I told them that that was all. Evan Williams and William Means seemed to be in a hurry to go to Ironton, for some reason not stated to us at that time, and they agreed to come back after supper, at which time, we, Mr. Adams and I, would have these accounts made out and be prepared to take receipt from William Means for his notes and indebtedness to the estate of Thomas W. Means.

X Q. 200. Is that all that took place that you recollect of?

A. That is all I recollect of now.

X Q. 201. Had you seen the order of the 16th of June, directing the notes of William Means to Thomas W. Means to be charged up to his distributable share in his grandfather's estate, along or about the date it was given?

A. It was given June 18th.

X Q. 202. Yes, sir?

662 A. I think I saw it on the same day. I certainly saw it that day or the day after.

X Q. 203. Do you know to whom he delivered that order?

A. Mr. Adams delivered it to me.

X Q. 204. Do you know to whom William Means delivered it?

A. I was not present when he delivered it.

X Q. 205. Have you any knowledge of who it was delivered to?

A. Only through Mr. Adams at that time.

X Q. 206. Who did Mr. Adams say it was delivered to?

A. I believe he said it was delivered to his mother.

X Q. 207. Did you have in your possession at that time the notes of William Means to Thomas W. Means? Had they been turned over to you as administrator with the will annexed of Thomas W. Means?

A. On June 16th?

X Q. 208. Yes.

A. No, sir, they were in the hands of Thomas M. Adams at that time, I presume as committee.

X Q. 209. Mr. Means, if these several notes executed by William Means to his father were *bona fide* debts against his distributable share, what interest was there of you and M-. Adams desiring an order from Mr. William Means to have them credited against his distributable share in Thomas W. Means' estate?

A. There was no necessity.

X Q. 210. Why were you and Mr. Adams anxious to get such an order?

A. I was advised by the attorneys of John Means and Margaret A. Means, that as a matter of prudence and additional security, and possibly to avoid contests, and to aid a speedy settlement that such an order would be a good thing for all parties concerned.

X Q. 211. Is it not true, Mr. Means, that the reason you wanted

that order, was because of the probation of your grandfather's will, wherein he provides for advancements being charged as executed gifts, and not to be charged against the distributable share or shares of his children?

—. That may have to a little extent influenced, but at the time I was advised that these notes were proper set-offs against the estate, against the interest of William Means in his father's estate.

X Q. 212. And yet you say that the question was debated,
663 and the order was advisable, to waive any dispute that might hereafter come up on that point? Is that your answer?

A. Any dispute?

X Q. 213. Any disputes as to their being set-offs?

A. No, that is not my answer. It was in a measure to waive dispute, and to protect from the attack of creditors if the opinion of the lawyers in regard to that item of the will referred to was incorrect.

X Q. 214. What creditors, Mr. Means, did you refer to, whose creditors?

A. We were thinking at the time, more especially of creditors in Cincinnati, of William Means.

X Q. 215. You knew, then, at that time, that he had a large amount of money in connection with the failure of the Metropolitan bank, did you?

A. I was aware of it through reading the papers. I had no intimate knowledge of his business affairs.

X Q. 216. Did not you know that there were many suits pending against him in Cincinnati?

A. That is, I heard.

X Q. 217. Through general remark?

A. Through general remark, and read.

X Q. 218. Did you investigate that after you were appointed executor of your grandfather's estate, as to his indebtedness in Cincinnati?

A. I did in one particular.

X Q. 219. In what one? About the heirs of August Labrot?

A. In this; that is the only one that I recall now.

X Q. 221. Did you not investigate any as to his owing sums on account of the valuation—his connection with the Metropolitan bank?

A. I think none at all.

X Q. 222. You had heard of them though?

A. I had heard of them, yes.

X Q. 223. You then, if I understand the meaning of your testimony, desired this order to cover up any contingency that might arise from any attack of creditors of William Means against his distributable share in his father's estate. Is that correct?

A. I do not know that that was the reason entirely, and that govern- that matter. I do not think I have stated so.

X Q. 224. I am not asking you, Mr. Means, whether it was the entire reason, but did it enter into any portion, or go to make up any portion of the reason why you wanted it?

664 A. I think it did go to make up a portion of the reason.

X Q. 225. When were you appointed executor of your grandfather's estate?

A. I think it was on the 28th of July, 1890.

X Q. 226. Well, you received these orders, you and Mr. Adams, before you had any authority whatever to receive them, did you, officially, as executors of your grandfather's estate?

A. There was no executor appointed at the time we received them.

X Q. 227. Who were appointed executors under the will of your grandfather?

A. John Means, Eugene B. Willard and William Means.

X Q. 228. Why did not William Means qualify as one of the executors, do you know?

A. I do not believe I ever talked to him about it.

X Q. 229. He was not in fact to be an executor according to the will of his father to your knowledge, was he?

A. Why, I understood from our attorneys that he was disqualified under the State law.

X Q. 230. I am not asking you what you understood. I am asking you what you say as his nephew.

A. I did not invite him.

X Q. 231. He was your uncle?

A. He is my uncle.

X Q. 232. And the son of Thomas W. Means, I understand?

A. I understand so.

X Q. 233. And yet you did not ask him on the subject, is that true?

A. I did not ask him to serve as an administrator or executor.

X Q. 234. Why not?

A. It was not all my business.

X Q. 235. Is it not the fact, Mr. Means, that you did not want him to qualify as one of the executors of that estate?

Objected to as it does not make a particle of difference whether he did or did not.

A. I do not think it gave me any concern why we were there, because I understood from my attorneys that *it* could not qualify.

X Q. 236. Is it not a fact, Mr. Means, that you did not want him to qualify as one of the executors of the will of his father?

665 (Witness is advised that he need not answer the question unless he wants to.)

A. I do not think I had any objection to his qualifying.

X Q. 237. When you received the revocation of the order of June 16th, which I believe was dated July 28th, what did you understand from that paper, that William Means' claims were upon the estate of Thomas W. Means, if any?

(Objected to as calling for the construction of a paper.)

A. I did not understand what his claims were any more than as an heir and subject to his indebtedness.

X Q. 238. You understood, then, that he was claiming as an heir by that paper, I understand you to state?

A. Yes, sir.

X Q. 239. Was there anything in that paper that indicated to your mind that he intended that those notes which he executed to his father should be an offset against his adjustable share of his father's estate?

A. I do not recall now what impression that paper made on me at the time as to the notes. The paper speaks for itself.

X Q. 240. I understand, then, your answer to be that the paper speaks for itself and construes itself, do I?

A. I think all papers do that.

X Q. 241. You have no other construction to put upon it except the one the paper bears itself, have you?

A. I have not.

X Q. 242. On the 16th of October, 1890, I understood you to state in your testimony-in-chief that Evan F. Williams and Charles W. Baker came to your office, which is the office of the Ashland Improvement Company, I believe?

A. Yes, sir.

X Q. 243. And requested you to go to the hotel to meet Mr. Means. What time in the day was that?

A. That was in the afternoon.

X Q. 244. About what time in the afternoon?

A. It was between 2 and 4 o'clock. I do not know whether I can remember any more closely than that.

X Q. 245. How long were you at the office before you went to the hotel? Did you go immediately to the hotel?

A. I think that we might have been there five minutes or we might have been there only one minute. I do not remember exactly. There were only passing remarks made before that time.

X Q. 246. I understood you to say that you did go and
666 converse with Charles W. Baker, Evan F. Williams, and William Means upon the terms of the settlement, is that correct?

A. Yes, sir.

X Q. 247. Who else was there during that interview?

A. I don't remember that any one was.

X Q. 248. Do you remember that there was not then anybody there?

A. That is my impression; that there was none.

X Q. 250. How long did that interview last, Mr. Means?

A. I think we were there an hour and a half.

X Q. 251. Were you not there until you left and left to — the house of Mr. Thomas M. Adams, and drew up the papers and receipts?

A. I was there until we went away from there to go to the house of Adams, and I am not positive that I went direct to the house of Adams.

X Q. 252. How long after they went to the house of Adams did you go, if you did not go with them when they went?

A. It was not long, because I was there and took supper with them.

X Q. 253. About what time in the evening would you think that you got to the house of Mr. Adams?

A. Between five and six o'clock.

X Q. 254. Then you were there from two or between two and four o'clock until between five and six o'clock at William Means' room at the hotel in consultation with him and his attorneys, were you not?

A. I think I was there about an hour and a half or such matter.

X Q. 255. Were you there between the times at which it is said by you that you think you went there and came away?

A. Yes, sir.

X Q. 256. Were there any figures or calculations made upon that occasion by you or any one of those gentlemen?

A. There was none made by me, as I think some of them must have made memorandums.

X Q. 257. Did you have any talk with them about figures or amounts in that interview?

A. I did so.

X Q. 258. Are you sure, Mr. Means, that you did not have a paper, and that you did not, at that time, in their presence and in conjunction with them, make figures relating to this settlement which was consummated at Mr. Adams' house at a later hour in the evening?

667 A. If any such figuring was done on my part it was probably adding one hundred and thirty-six and twenty-six, and such matter and dividing by five, or dividing one hundred and fifty by five and see what difference it made, or seven hundred and fifty by five.

X Q. 259. Then you did do some figuring?

A. If I did that was what it was, and that was as to the amount to be realized out of the estate by each of the heirs.

X Q. 260. Are you willing to state that you did not make any other figures on that occasion, or talk about figures on that occasion?

A. That was about the amount due to John Means, Margaret Means, and Mrs. Adams, and as to figuring the amounts due them, I had in my possession the amounts I claimed then were due to them, and have always claimed were due to them.

X Q. 261. You have said, I believe, Mr. Means, that at that conversation on the 16th day of October, that there was a talk between you, Baker, Williams and William Means as to paying over to William Means the twenty-six thousand and some odd dollars, was there or not?

A. There was a conversation as to paying to Margaret Means and John Means the amounts that William Means was owing to them at the meeting in the hotel on October 16th; nothing about paying an amount to William Means.

X Q. 262. Have you not stated in this deposition that Charles W. Baker asked you if you would not pay over the $26,000.00 to William Means, and that you said you would, or words to that effect, provided Mr. Adams was willing—was there any conversation in regard to such a transaction at that time between you?

A. I never said that I would be willing to pay to William Means any money from the estate of Thomas W. Means in cash or any other form unless it became due to him from the estate.

X Q. 263. Have not you testified in your examination-in-chief that Charles W. Baker, and Evan F. Williams did not ask you if you would pay that $26,000.00 to William Means?

A. I do not recall that I did. My impression is that I testified that they wanted to know if he would receipt to Margaret Means, John Means and Mrs. Adams, if they would turn it over to him.

X Q. 264. Did you or not testify in substance, as I have indicated in the last question?

A. I do not recall that I did.

668 X Q. 265. If you did, was it true that such a conversation took place?

A. The request for that to be done might have been made on the part of Baker and Williams by William Means.

X Q. 266. Did you not say in effect in your answer to questions in chief that you would see your co-administrator, and if he was willing you would pay it over?

A. I did not testify to anything of that kind.

X Q. 267. Did you not testify in effect to that?

A. No, sir.

X Q. 268. You now testify that no such conversation took place at that place, as I have indicated, as having been answered by you in your examination-in-chief.

A. On my part there was no speech to pay to William Means, from Adams and myself, administrators.

X Q. 269. Mr. Means, how happened this matter to come up about paying anything to Mr. Means?

A. It was brought up by Mr. Baker, as I remember.

X Q. 270. You now say that you never told Mr. Baker at the hotel in Ashland in the room of William Means where he was and M. & F. Williams was, and Charles W. Baker was on the 16th day of October, 1890, that you would pay over, with the consent of your co-administrator $26,000, or any part of it to William Means?

A. I say so; yes, sir.

X Q. 271. Did you or not upon that occasion of this settlement and arrangement hold out any inducement to William Means, or his attorneys, Baker and Williams, that you would do it, in any way, shape or form, whatever?

A. The only thing that they asked that drew from me a reply as to payment, that could possibly be construed to my mind as an inducement, or whether John Means and Margaret A. Means would repay to William Means the amount that he might receipt to the administrators for. This was not in any way connected with the proposition that William Means should receipt to the administrators

to the amount of $136,000 for his indebtedness to them, but was to ascertain if, as I have stated, his brother and sisters would repay to him any amount that he might order paid to them. Mr. Means seemed to be very much troubled about the receipt for $136,000.

X Q. 271. I have asked you nothing about that. I am asking what inducement you gave to them, or promises that you would pay to William Means the $25,000, if any?

A. I told, whoever it was answering the question at that time, that I could not promise that the money paid to John Means
669 and Margaret A. Means, would be at once turned over to William Means, or that it would be all turned over to him, but I can say that they considered that money lost, and that they did not intend to let him suffer.

X Q. 272. Did you not say, on that same occasion, in answer to questions in chief in this deposition that you would do that if your co-administrator would agree to it?

A. Pay the money over to John Means, Margaret A. Means and Mrs. Adams. I did agree to do that if the refund bonds were obtained, and my co-administrator was willing that it should be done.

X Q. 273. What necessity was there of any agreement between you and your co-administrator about paying the money which William Means owed to your father and to your two aunts, if it was a *bona fide* debt and they were entitled to it?

A. At that time we had in cash enough to make a distribution to the heirs in a large amount, but I think not half as large as the indebtedness of William Means to the estate, and pending the converting of the assets of the estate into cash or something that would represent to us as administrators the same thing in our final settlement. I did not feel that I ought to agree to advance on William Means' account such a large sum of money without consulting with the other administrator.

X Q. 274. I will again ask you what necessity there was, if this money of William Means was to be paid over to your father and your two aunts as an indebtedness which he owed them, what necessity there was of any co-operation between you and your co-administrator for that purpose?

A. As an administrator I could not pay the money to John Means and Margaret Means without the co-operation of my co-administrator.

X Q. 275. That is very true, but in connection with the conversation and talks with the hotel —— on the 16th day of October, what necessity was there for you to say that you would pay this money over to John Means and Margaret Means and Mrs. Adams with the co-operation of Mr. T. M. Adams—what necessity was there for that statement of yours to them?

(Question objected to as assuming that there was any necessity.)

A. Why, Mr. Adams and I could make no payment, one without the assistance of the other.

X Q. 276. Is that your answer to this question, Mr. Means?

A. Why, as I understand the question.

670 X Q. 277. Is not this the fact that you had agreed with the co-operation of Mr. Adams, and your father, and your aunt Margaret Means, that if Mr. Adams was willing, you would pay this $26,000 over to William Means—is not that the fact?

A. No, sir.

X Q. 278. Did not you state upon that occasion that you were willing—that you represented your father and Margaret Means, and that if Thomas M. Adams was willing to this arrangement, that you had no objections?

A. No, sir; I made no agreement to pay back to William Means any money except as John Means and Margaret Means might see fit to do so to him.

X Q. 279. Did not you say in that conversation that you represented Margaret Means and John Means, and that they did not expect this money back, and that if Thomas M. Adams, your co-administrator, was willing, you were willing that he, Mr. William Means, should have it—did you make that statement?

A. Not in the form you have given it there, sir.

X Q. 280. What form did you make it in?

A. I did not bring in Mr. Adams at all. You seem to have brought in two statements there in which I did not use it.

X Q. 281. Did you not in that conversation say that you must consult your co-administrator before you paid this money to William Means upon any condition, and that if he was willing you had no objections, or anything of that import?

A. I never agreed to pay that money to William Means as an administrator with the consent of Mr. Adams at any time.

X Q. 282. Did you not hold out any inducement to William Means, and Baker, and Williams, at that interview that he would eventually get this $26,000?

A. Only as I have stated, that his brothers and sisters considered the money lost, and that they did not intend to let him suffer.

X Q. 283. Mr. Means, you have stated in one of your answers above that you did not feel that you could pay out this sum of $26,000, but inasmuch as William Means' indebtedness was so agreed to the estate and that you were ready for a distribution, now let me ask you this question: Was not William Means, provided these notes are not paid out of his distributable share in the estate, entitled to fully, if not more than $136,000?

A. So far as we had realized out of the estate in my settle-

671 ment with the court, something over $400,000, and until we realized from the other assets remaining, it was a matter of judgment to determine how much would be due to William Means if he was not charged with the $136,000 at that time.

X Q. 284. Is it not now your judgment as one of the administrators of this estate that the heirs will get as much as $136,000 apiece?

A. As to that amount being realized for the four heirs, for each of the four heirs outside of William Means, I have doubts that

$136,000.00 over and above expense to administrate the estate, will be paid to each of them.

X Q. 285. I will ask you again Mr. Means, if it is not your judgment that the $136,000.00 which has been paid out, as you claim out of the estate of Thomas W. Means by your father, attorney-in-fact, and which we deny, the settlement which you claim, if made as a *bona fide* settlement upon which the $136,000.00 receipt was given by William Means, does that decrease in the least the distributable share of your father and the three other heirs?

(Objected to on the ground that the question answers itself.)

A. If the estate, as inventoried, has diminished by $136,000.00, the amount of the notes with, of William Means, it follows that the distributable share of each of the other four would be diminished as a result of the loss to that amount in assets, and further as a result of William Means being relieved from a set-off in his share of the estate.

X Q. 286. Suppose now, that William Means was, as he was, entitled to one-fifth of his father's estate, and as you claim that that amount of $136,000.00 had been paid out of the estate for him; if that amount of $136,000.00 is offset against his distributable share, does that lessen the distributable share of your father and your aunts and Mr. Culbertson?

(Objected to as argumentative, and as calling for a mathematical deduction.)

A. If the amount of $136,000.00 referred to as offset to part of the distributable share, it does not lessen the amount of the other four.

X Q. 287. Now, then, Mr. Means, if the shares of your father, and the other three was not lessened by the $136,000.00, which it is claimed was paid out and offset to William Means' distributable share, what reason was there why you could not have paid him the $26,000.00? Why did that impoverish the estate as you have said above?

672 A. Each heir of Thomas W. Means is entitled to one-fifth of the estate less any set-off. The basis of estimation of the estate on the 16th October, was the inventory of the estate, first; secondly, the amounts we had realized; and, thirdly, the amounts that we could in fair judgment expect to realize. If the total amount of the inventory was $750.00 and we estimated that amount would be realized out of the estate and William Means' notes considered as part, that went to make up the $750,000.00 after those notes had been charged to him on his distributable share, the accounts that we could estimate at that time as probably due him was only $14,000.00, and in case the estate did not realize, and as it now appears did not realize, the full inventory, we would be overpaying the account of William Means, if we excepted the receipt and paid to any one for him the sum of twenty-six thousand dollars or twenty-seven thousand dollars on the 16th of October, 1890, and it was for that reason that consultation between the administrators would be neces-

sary to determine whether either or both would agree to make payment on his account after charging William Means with the $136,000.00. It is possible at that time that I might have believed an amount in excess of $750,000.00 would be realized.

X Q. 288. Mr. Means, did you see Mr. Adams on the day of the 16th of October that you went to the room of William Means with Baker and Williams? Did you have any talk with him before the signing of these receipts at Mr. Adams' house?

A. I saw Mr. Adams at his house, and it is possible that he and I may have conversed alone.

X Q. 289. Did you have a talk with him in regard to what you have said relative to the $26,000.00 being paid, in any event, to William Means?

A. I do not think that I told Mr. Adams that I had any contemplation in the payment to William Means. There was not any contemplation of payment to Margaret Means and John Means and Mrs. Adams on account of William Means.

X Q. 290. Did you talk with him on this subject?

A. With Mr. Adams?

X Q. 291. Yes.

A. We all talked to him about that subject because the receipts were signed there.

X Q. 292. Did you claim as was claimed by me, that you answered in your direct examination, wherein you said in substance that you had no objections to William Means having this
673 money if Mr. Adams was willing. Did you have any conversation with him about that subject before these receipts were signed at the house of Mr. Adams?

A. The receipts for $26,000.00 were discussed, and the matter of payment was discussed, at the house in the presence of Mr. Adams and the others before those receipts were signed, because the receipts were discussed.

X Q. 293. Was anything said in that conversation about paying over $26,000.00, or in effect, that William Means, in any event was to get any benefit of it?

A. I do not think there was.

Cross-Q. Mr. Means, did you have any consultation with Mr. Adams in regard to returning the $26,000.00 receipt to William Means?

A. I did.

X Q. 294. Why, after this conversation at the hotel, on the 16th of April, 1890, and the signing of these receipts at Mrs. Adams' house, did you revoke one receipt, or return one receipt, without returning the other?

A. The two transactions were entirely separate. The indebtedness of William Means to the estate was a matter in which Mr. Adams and I as administrators acted for the heirs alone, and that matter was closed up to our satisfaction, as we then had every reason to believe, to the satisfaction of William Means. But the matter of the $26,000.00 was not, but the matter of the $26,000.00 was not

approved by Miss Means and we felt to carry it out was against her wishes and desires.

X Q. 295. Mr. Means, were not all these receipts discussed and agreed upon and signed at the same time?

A. What receipts?

X Q. 296. The $136,000.00 and the $26,000.00 receipts?

A. I think the receipt for $136,000.00 was signed first; that the form had been prepared in advance on the 6th of October and that William Means was given that to copy and sign, which he did, and also signed the original paper from which he copied. The other receipts were drawn in form by John F. Hager and were agreed upon by William Means and his attorneys at that time.

X Q. 297. The question asked you seems to be very short and plain. I will ask you again if the receipt for $136,000.00 and the one for $26,000.00 were signed by William Means at the same meeting and at the same time, and that night when you all met at Mr. Adams' house?

A. They were signed on the same evening but they may have been signed an hour apart.

674 X Q. 298. Have you the letter that you received from Margaret Means upon the subject that you testified to on yesterday?

A. I have.

X Q. 299. Have you it with you?

A. I have.

X Q. 300. Will you show it to me?

A. With the consent and advice of my attorneys I will.

The witness in answer to inquiry produces a letter dated October 20th, 1890, from 1711 Summer street Philadelphia, from Margaret A. Means to himself from which the following extract is read by counsel for respondents:

"1711 SUMMER ST., PHILADELPHIA, *October 20th*, 1890.

MY DEAR COOK: Your welcome letter came today in company with three papers from Mr. Hager to be signed by your father and myself, and I have done so, you wretch, much against my will, and return them in today's mail."

X Q. 301. Did you have any other letter from your aunt upon that subject prior to this one, or since that, explanatory of her disapproval?

A. Not that I can recall.

X Q. 302. Did you get any?

A. I do not think I did.

X Q. 303. Mr. Means, was there any other conversation that took place on the 16th day of October in the room of William Means at the hotel in Ashland which you have spoken of where William Means, Baker and Williams were present excepting the conversation relating to the $26,000.00 settlement?

A. There was.

X Q. 304. Was there any conversation there in which his family, his wife and his daughters, were mentioned?

A. There may have been some reference to them made by Mr. Baker.

X Q. 305. Was there any made to them by Mr. Baker or you, or Mr. William Means, or Mr. Williams, or by anybody else?

A. I think there was one made by Mr. Baker.

X Q. 306. Was there any conversation in regard to the liabilities of William Means, or to his creditors pressing him, or any conversation in regard to his indebtedness or his creditors?

A. There may have been some general allusion to it.

675 X Q. 307. Will you state what that allusion was, as nearly as you can?

A. Something that indicated that he was heavily indebted to the bank.

X Q. 308. Give the conversation as near as you can recollect it now?

A. I cannot give the conversation. I do not recollect it.

X Q. 309. Can you give any particular of it, or the substance of any part of it?

A. Well, I think it was Mr. Baker in his statement said that as a matter of choice between closing up and settling, closing up his indebtedness to the estate or allowing a chance for creditors to come in any time to take his interest in the estate, that it would be a better move for William Means to close his indebtedness to the estate and depend upon his brothers and sisters.

X Q. 310. That then was one of the considerations of this settlement was it?

A. It was not on my part. It may have been on theirs.

X Q. 311. Did you understand it on theirs to be their consideration for this settlement?

A. I understood it to be the advice of Mr. Baker that it was better for William Means to settle up his indebtedness to the estate.

X Q. 312. Well, then, up to that time, from what took place, William Means seemed to have considered that these notes were not chargeable against his distributable share, did he?

A. William Means seemed, from the 28th of July up to the 4th of October to be reluctant to settle up with the administrators.

X Q. 313. Upon what was that reluctance based, if you know?

A. I do not.

X Q. 314. Have you no idea?

A. I have no idea. I suppose it was based upon the advice of Mr. Jordan.

X Q. 315. And not derived from the paper that was served upon you upon the 28th of July, I believe. What is your idea about the matter?

A. Well, if I had the paper of 28th before me it might recall the idea that it impressed upon me, then, if I was to reread it.

X Q. 316. Did you not say in that conversation, or have anything to say in regard to the discussion in regard to his creditors?

676 A. In what way do you mean?

X Q. 317. That you have detailed here, that you have spoken about?

A. I think I was a listener to most of that, not being acquainted with the amount of his liability.

X Q. 318. You were a willing listener upon that subject were you not, as it was coming your way?

A. I always try to listen to gentlemen when they talk to me.

X Q. 319. Then you did not say anything upon that subject, did you?

A. I do not believe that I did.

X Q. 320. Well, did you or did you not?

A. My impression is that I did not.

X Q. 321. You are not willing to swear positively whether you did or not, are you?

A. Well, from what I have said before, that I did not know much about it, I am inclined to believe that I did not.

X Q. 322. You had heard of his indebtedness from me, had you not, in February or March, 1890, three or four months before in a visit that I made to you in Ashland, as you have testified in your examination-in-chief?

A. I testified as to your visit, I do not remember testifying——

X Q. 323. Did not you testify as to my statement, that he owed debts and that they were liable to trouble him?

A. I do not remember now, I might have done so.

X Q. 324. Well, Mr. Means, if there was any consideration shown for the execution of this $136,000.00 receipt, and the $26,000, what necessity was there of not talking about the indebtedness of William Means or the amount that he was to get or might get?

A. I do not know that there was any. I was invited to go around there and I went.

X Q. 325. You heard that talk?

A. I heard the talk in the hotel when I was present.

X Q. 326. Stood back as innocent as a lamb, and did not say anything, did you?

A. I have already testified as to part of the conversation.

X Q. 327. I want to put you on record?

A. I did not set back innocently as a lamb and say nothing; I did talk. I was innocent as a lamb.

X Q. 328. How long after Mr. Means signed those receipts on the 16th of October, did you see him again?

677 A. The next time that I now recall of seeing him was on the 23rd of October, 1890.

X Q. 329. You have not seen him since, have you?

A. Yes, sir.

X Q. 330. Where did you see him?

A. I saw him on the 31st of October, 1890.

X Q. 331. Have you seen him since that time?

A. I have.

X Q. 332. Where?

A. At Ashland. I think he stayed here after that.

X Q. 333. How long?

A. I do not remember.

X Q. 334. Have you seen him since the year 1890?

A. I do not know when he left here, when he went away South. I have seen him I do not think since he went away from here in 1890.

X Q. 335. The estate has never paid him anything, has it, for support?

A. Not in cash or by check, or in any other way a dollar—not a dollar.

X Q. 336. You have said, I believe, that the wife and children of William Means were your aunt and cousins, that their names were mentioned in connection with this settlement. Tell all that was said in regard to that.

A. I do not think that they were mentioned in connection with the settlement, they were mentioned at that meeting; which settlement do you refer to?

X Q. 337. On the 16th of October, 1890.

A. I said that I did not think that they were in the settlement, they were mentioned at the meeting.

X Q. 338. At which the settlement was discussed; is that correct? Were they mentioned at the meeting at the hotel where the terms of this settlement were agreed upon between you, upon the part of the estate, and Williams, Means, Baker and Williams upon the other side?

A. They were mentioned while we were in that room. In the hotel on the 16th of October, 1890.

X Q. 339. What was the effect of this settlement so far as the share of William Means in his father's estate is concerned, and what did it have upon his support of his wife and children?

(Objected to as irrelevant and argumentative, and calling for an opinion, and not for a fact.)

A. That is a question in which an answer, to be properly given, would require me to state that I understood that William
678 Means was insolvent at that time, and that is, he was depending entirely to support his family on the proceeds of his interest in his father's estate, it would affect his capital to support them by diminishing his interest in his father's e[illegible]e.

X Q. 340. Do you not know, and did you not know from the time of this settlement that William Means was insolvent?

A. I understood that to be the fact.

X Q. 341. This settlement then, was in effect rendering the wife and children whose names were discussed upon that occasion penniless, and without any support provided they had nothing to support themselves on out of their own estate.

Objected to for the reason that the settlement of admitted indebtedness could not produce that effect; that the indebtedness, if valid, did produce it.

Counsel for complainants claim that the settlement was not a

valid settlement, and it was not made, nor intended to be made as a valid settlement, and that, therefore, the question is proper.

A. I knew of no reason why William Means should depend entirely on his interest in his father's estate, and support his family. He was capable, at that time, I thought, of earning a living for himself and his family.

X Q. 342. Will you please answer my question?

A. I thought I did.

X Q. 343. Can you answer the question whether it did or did not, at that time, virtually render them penniless, if they did not have any means of their own?

A. Under the general theory, that a man's family is penniless unless he has worldly assets, they were penniless as I understood it. That refers to the fact that William Means was insolvent, and that the $136,000.00 was approximately his entire interest in the estate.

X Q. 344. Mr. Means, don't you know as a fact that William Means is absolutely without the means of support today?

(Objected to as irrelevant.)

A. I understand that he is insolvent.

X Q. 345. You spoke on yesterday about a visit of mine (H. P. Whitaker) to meet in February or March, 1890. Have you detailed all the conversation that took place between you and me upon that occasion?

A. I have given what I thought was the answer to the question that was asked me in the examination of Mr. Anderson, and
679 I think there was a general conversation took place as there would be when any two men get together.

X Q. 346. Didn't I discuss with you at that time fully the question of the creditors of William Means coming upon his estate, or his expectancy in his father's estate, if his father should die, who was an old man—if he should die and they would secure it?

A. I believe you mentioned it.

X Q. 347. Did not I say to you in that conversation, Mr. Means, that I and Mr. Glidden and Mr. Williams had seen Mr. Means, at Xenia, Ohio, a few weeks before and had conversed with him about trusteeing his expectancy in his father's estate for the benefit of his wife and children?

A. You did not, on the contrary you told me and led me to believe that you did not know how William Means felt about the question of a trustee for his wife and children.

X Q. 348. Did I not in the latter part of February, or the fore part of March, 1890, in the A. C. & I. office, in the town of Ashland, state to you that William Means had agreed to make a deed of trust for his expectancy in his father's—Thomas W. Means' estate for the benefit of his children?

A. You did not.

X Q. 349. You say in your examination-in-chief that I did talk to you about trusteeing that estate.

A. You did.

X Q. 350. And that I wanted to see your father about it—is that all I said to you on the subject of trusteeing?

A. I think you spoke something about the creditors of William Means.

X Q. 351. Did I not say to you upon that occasion that I was not the attorney of William Means, but that Evan Williams and General Hunt were his attorneys?

A. You may have told me that, but I do not remember that.

X Q. 352. I think I did. Did not you say in reply to my asking you about executing this trust at once in his expectancy that it would be wrong to execute it and cheat his creditors out of their just dues?

A. I did not.

X Q. 353. Are you right sure about that?

A. I am.

X Q. 354. You say that his creditors were mentioned in connection with that conversation?

A. They were.

X Q. 355. And you say also that I may have said that I
680 was not the attorney of William Means, and that Williams and General Hunt were?

A. You may have said that.

X Q. 356. And I did talk with you about the trust business, and wanted to see your father upon the subject?

A. You did, and represented yourself as the attorney of Mrs. William Means, and not the attorney of William Means.

X Q. 357. That is right. Do you recollect of coming up to the hotel after that conversation down there, and we had another talk about it?

A. I have an indistinct recollection of meeting you at the hotel. It is not as clear as the recollection about the meeting in the office.

X Q. 358. Mr. Means, have you ever had any talk with any one, or consulted with any one in regard to the terms of the division of William Means' interest in this estate before the suit was brought or that it was instituted?

Objected to as being wholly immaterial, as not in issue, and improper as an item of evidence in the case.

Counsel for defendants advise witness that he need not answer the question.

X Q. 359. Do you refuse to answer this question?

A. Under the advice of attorneys I decline to answer. I am perfectly willing to answer the question and prefer to do it.

X Q. 360. Did you, at any time, receive a letter from David Sinton written to your father, which you opened and read the contents of?

A. I received from David Sinton, addressed to father, several letters.

X Q. 361. Did you receive a letter, at any time, from David Sinton in which there was anything said about settling, or a meeting between William Means and John Means for the purpose of settling

these differences in the estate of his father, if there were any differences, any claims whatever?

Question objected to unless the question is put definitely, that the witness can answer and counsel may decide whether they wish to object further or not.

Objected to as irrelevant and improper.

A. There may have been letters after the beginning of this suit which referred to the estate.

X Q. 362. Did you not receive a letter directed to your father from Mr. Sinton some time in 1890, which you opened and
681 answered Mr. Sinton by saying that your father was not at home, and that you would communicate with him in regard to the letter or the contents of it?

A. I may have received a letter from Mr. Sinton, and made such a reply, but I am not at all positive, and I do not believe that the letter referred to the question of the estate but to differences between John Means and William Means as between themselves.

X Q. 363. Did you deliver that letter to John Means at once?

(Question objected to as irrelevant.)

A. I do not remember about that.

X Q. 364. Did you ever give it to him?

A. I do not remember about that.

X Q. 365. You are not able to state, then, I understand, whether that letter did or did not refer to differences in regard to his inheritance from his father?

A. I am positive that if the letter is the one I refer to and is the one referred to by the counsel, or received before our settlement of October 16th, 1890, with William Means, it did not refer to matters pertaining to the estate of Thomas W. Means.

X Q. 366. Did not Charles W. Baker in the presence of M. and F. Williams and William Means and yourself at the hotel in Ashland, on the 16th day of October, and at the time you said the meeting between you and them was had, state, that he wanted to settle up this matter so that the creditors of William Means could not get it?

(Question objected to unless counsel specifies what matter.)

A. I do not know that those exact words were used. He made a remark that he thought that William Means should protect the interest of his brother and sisters as against other creditors.

X Q. 367. What consideration did he allege for that protection and preference?

A. The matter of brotherly and sisterly relationship.

X Q. 368. Then, I understand you to construe that settlement and that statement to be, that notwithstanding he owed your grandfather's estate this money, and other creditors money, that you should be paid before them, do I?

A. You do not understand me that I should be paid anything.

X Q. 369. I mean by "you" the estate of Thomas W. Means.

A. As far as the estate of Thomas W. Means was concerned in

that conversation, it was understood that William Means was
682 paying his indebtedness to it, and having his indebtedness charged to him as the mode of payment.

X Q. 370. Notwithstanding the fact, Mr. Means, that he owed for much more than the other people, this was done, was it?

A. I think that is self-evident.

X Q. 371. There was no consideration then, other than the mere fact of payment passed at that time, on preferring the estate of Thomas W. Means to his other creditors, was there?

A. There was no other consideration so far as the $126,000 was concerned.

X Q. 372. It was considered that the moral obligation to his father's estate was greater than the moral obligation to his other creditors, was it?

A. I presume so.

X Q. 373. And yet you say there was no consideration for paying your grandfather's estate these notes which William Means had executed to it for money which it is claimed was paid out of it by John Means as his attorney-in-fact in connection with the Metropolitan Bank failure?

A. The consideration was the relinquishment of his indebtedness to the estate by charging him with the notes the estate held of his.

X Q. 374. And that is all, is it?

A. That is all so far as the $136,000.00 receipt is concerned.

X Q. 375. Well, was there any other consideration connected with the $26,000.00 receipt which was executed at the same time that the $136,000.00 receipt; was there another consideration to that?

A. There was no consideration other than the brotherly action and influence.

X Q. 376. Is it not a fact, Mr. Means, that the $26,000.00 receipt was executed by William Means to you and Mr. Adams for the purpose of covering up that amount if it be coming to him than to pay it to his creditors?

A. I think it was a preference of creditors.

X Q. 377. You don't understand my question perhaps. Did you prefer to pay the money, the $26,000.00, to William Means rather than to pay it to creditors?

A. So far as I was individually concerned I would like to have seen William Means free to have been able to pay him a good large sum.

683 X Q. 378. Is it a fact, Mr. Means, today that you rather wish William Means got his money out of this estate than to see creditors getting it?

Objected to as irrelevant and incompetent, and as intending rather to argue the case than to ask for the facts.

A. I always like to see a man pay his honest debts, and I would also like to see a man have something, too, after paying them.

X Q. 379. You did not think that way when you took all of his

patrimony to pay off his debts to your grandfather when he owed as much more to his other creditors, did you?

A. I thought that the estate of Thomas W. Means was entitled to credit, and that William Means should be charged with what he owed them, and to that amount his creditors were not interested in the estate of Thomas W. Means.

X Q. 380. Is it not a fact that by this settlement, instead of this money, $136,000.00 if it should have been subjected to the payment of other debts instead of yours as administrator of Thomas W. Means' estate, that it would reduce the amount of your father and the three other heirs' share in your grandfather's estate?

Counsel for respondent suggest that counsel for complainants have been arguing this case with the witness without objection on their part and they suggest that he now ask for facts.

It is suggested that the attorney for complainants will conduct the examination as he pleases.

A. If the indebtedness of William Means to the estate of Thomas W. Means was treated as a gift to him, and no other obligation was existing of William Means to the estate of Thomas W. Means, and he was an heir of the estate, his interest being open to the attack of creditors would, on account of the decreased inventory, have diminished the amount due to the other heirs, but the attack of creditors would have made no difference in the amount to be realized by each of the heirs if the $136,600 were treated as a gift.

X Q. 381. If the $136,000 had been treated as a gift, would it not diminish the estate of Thomas W. Means to the amount paid out, as is claimed, for William Means' benefit on account of the Metropolitan Bank failure and trouble?

A. If it had been treated as a gift, it would have diminished the amount of the estate as inventoried.

X Q. 382. Now, then, the settlement that you made on the 16th of October did not diminish the distributable share of any of
684 the rest, but only so far as the amount paid out was more than William Means' distributable share in the estate, did it?

A. Now, I do not know even then that it was diminished. If the excess were so paid out, we would have to make that good.

X Q. 383. Did not this settlement in effect pay back to the estate so much money as was coming to William Means out of his father's estate by way of a distributee?

A. The $136,000 offset to that amount his interest in the estate of Thomas W. Means when he receipted to us for that amount.

X Q. 384. When he receipted to you, then, for that amount it increased or left the distributable shares of the other heirs the same as it would have been had not $136,000 been paid out, didn't it?

A. The $136,000 being claimed as an asset, his receipt left the amount of the inventory the same.

X Q. 385. Then, in effect, the payment by this arrangement at the hotel, at which time you say his indebtedness was discussed, gave to the estate the whole of the estate's claim against him by rea-

son of these notes, or to the amount of his distributable share, as against other creditors.

A. I do not acknowledge that the taking of the receipt of William Means for $136,000 was the only method in which or by which we could have charged him with the $136,000.

X Q. 387. What other way could you have done it?

A. I thought at the time and was advised at the time and from the time I had been appointed one of the administrators with the will annexed, that we had the right to enter as payment to William Means and charge to him credits on his notes instead of cash payments, and those notes constituted an indebtedness to the estate that was a legal set-off whether acknowledged by him or not.

X Q. 388. Did you think so when you got the notice which was served upon you and Mr. Adams at Catlettsburg on the 28th day of July, I think? Did you then think you had a right to offset them without his saying so?

A. I think so.

X Q. 389. Then you did not think that that paper had any validity whatever?

A. I did not think that it affected the right to offset his indebtedness to the estate as against his distributable share.

X Q. 390. Why did you want it revoked?

685 A. Mr. Means came into my office and said that he wanted to revoke it.

X Q. 391. You never did offset this amount against his share until you claim he gave permission to do it?

A. We never offset them and never made any distribution to the heirs previous to the 16th of October. We did offset it against his on the 6th of October.

X Q. 392. Do you know anything about, of your own personal knowledge, a $45,000 note executed by William Means to Thomas W. Means on the 22nd of October, 1888?

A. I know something about it of my own personal knowledge, yes, sir.

X Q. 393. Where were you at the time that that note was executed?

A. I know nothing of the execution of that note. I only know of the note itself, and the payment of the note.

X Q. 394. You know nothing about the consideration of that note except what you have been told?

A. And what I have seen on the books of Margaret Means in addition to what I have been told.

X Q. 395. That is all you know?

A. And what I have seen on the books of Thomas W. Means and the note itself, and the foot-note attached to the note.

X Q. 396. Who made those entries on the books in regard to that note of Thomas W. Means?

A. John Means, I think.

X Q. 397. Your father?

A. Yes, sir.

X Q. 398. Who made the entries on Margaret Means' books?

A. John Means, I think.

X Q. 399. Since the institution of this suit, have you ever had any talk with Mr. Thomas Culbertson or any of his personal representatives with reference to any deficit that appeared upon the books of your grandfather, wherein his mother, Mrs. Jane Culbertson, was not given a hundred thousand dollars, or enough to make her equal with the other heirs, $180,000, in August, 1884?

A. I do not think I ever had any conversation with Thomas M. Culbertson in regard to that matter.

X Q. 400. Have you had any conversation with any of his representatives upon the subject since the institution of this suit?

A. It is possible that I have spoken to his trustee about the matter.

686 X Q. 401. In regard to that deficit?

A. Yes, sir. I do not know that I have. I am not certain about it. I have talked to him about the estate and the way in which we are managing it.

X Q. 402. I am talking to you about the deficit that appears upon the entries in her account upon your grandfather's books. That is what I am asking about. Have you had any talk with anybody upon that subject or the settlement of it?

A. I do not know what you mean by deficit. If you refer to the fact that she is not charged as much as the others, and call that a deficit, I know that such is the fact upon the books. I have seen it upon the books of Thomas W. Means.

X Q. 403. How much does she appear to have, or her heir have, upon the 4th of August, 1884, less than other four children of Thomas W. Means?

Objected to because it already appears by accounts put in by complainants-in-chief and stated in the bill.

A. That appears by the books.

X Q. 404. I am asking you.

A. I would have to look in the books to refresh my mind.

X Q. 405. In the neighborhood?

A. I do not think I could give it approximately.

X Q. 406. Was she or her legal representative, or has her heir, Thomas Culbertson, been paid, during the lifetime of Thomas W. Means, as much as the other four heirs, as appears from the books of Thomas W. Means in your possession and under your control?

Objected to as irrelevant, because it already appears in the accounts in evidence put in by complainants.

A. I have seen on the books of Thomas W. Means that the balance charged against Mrs. Jane Culbertson on the 4th of August, 1884, or, I should say, made as of August, 1884, that she is not charged as much as John Means, William Means, Margaret A. Means and Mrs. Mary A. Adams.

X Q. 407. Now, have you had any chat or talk with Thomas Culbertson or his legal representatives in regard to making up that deficit?

Objected to, and witness is instructed he need not answer the question.

A. Under the advice of my attorneys, although I am willing to answer the question, I decline to do so.

X Q. 408. Have you read the testimony of your father, John Means, taken in chief for the complainants in this action, upon that subject?

687 A. I cannot say whether I have or have not. I have read parts of the testimony of John Means taken in chief, but I have not read it all.

X Q. 409. Do you recollect what his statement in his deposition was as to the reasons that Mrs. Culbertson had not been, or her heir had not been paid enough to make them equal with the others in the advancements of August, 1884?

A. I do not recollect it as derived from the testimony.

X Q. 410. Mr. Means, in question 371, direct examination of John Means for complainants, I find, speaking of the balance in the books of your grandfather, charged in Mrs. Culbertson's account: "Why was not that balanced by crediting an amount sufficient to make the advances to the Culbertson heirs the $180,000, as was done with the other accounts in May, 1884?" His answer is: "He had given her husband a quarter interest in one furnace, and he had never charged her account. He was a partner in that furnace company himself, and had furnished money to build a new furnace and to carry it on, thinking to the advantage and benefit of himself and Culbertson, and he said that what he had lost in the operation would have been a legitimate charge against him if he had owned and would have made as much; that he had spent as much for that account as he had for the others. Then, too, he said there was only one Culbertson heir, one grandchild there, and he had other grandchildren, ten, I believe, that he would be in that looking past his own child; that that grandchild would have as much, about, as any one else."

X Q. 411. I will ask you, in connection with that question and answer, the question propounded to John Means and his answer, if you know whether or not this record discloses the fact that Thomas W. Means, about the time he wrote that will, executed and delivered to W. W. Culbertson, in consideration of one dollar, a complete release for all the losses that he had made and everything that he owed to Thomas W. Means?

A. I understood, from hearing the testimony of W. W. Culbertson, that some release had been granted him in connection with the Culbertson, Means and Culbertson losses.

X Q. 412. Thomas W. Means, as you understand, made that release, and it is a part of this record?

A. It may be. I have not seen it.

X Q. 413. What relation did W. W. Culbertson bear to Thomas W. Means?

688 A. He married his daughter.

X Q. 414. He was his son-in-law, then?

A. He was his son-in-law.

X Q. 415. I will ask you to state, in your opinion, whether or not that release was a release to W. W. Culbertson of that much money which he owed Thomas W. Means?

Objected to as calling for witness' construction of the purport and effect of a written instrument.

A. I have never seen the paper in question and cannot base an opinion on it.

X Q. 416. A receipt to W. W. Culbertson diminished the wealth of Thomas W. Means that much, didn't it, however much it may have been?

A. It might have, if W. W. Culbertson was solvent, and had that much money that could be gotten at.

X Q. 417. Does the wealth of W. W. Culbertson enter into the question of diminishing the estate of Thomas W. Means that much, if he voluntarily released it?

A. It depends on how much W. W. Culbertson was worth, and how much you could get out of him I suppose.

X Q. 418. I will ask you again, if a release of this amount of money to W. W. Culbertson, which he owed to Thomas W. Means, did not diminish his wealth, if as John Means says, he lost that money?

A. If Thomas W. Means had lost the money, his estate was diminished that much. If W. W. Culbertson lost the money, and he was indebted to Thomas W. Means for that amount, I am not sufficiently acquainted with the wealth of W. W. Culbertson to base an opinion as to whether there was a loss sustained in making a release to him.

X Q. 418½. Upon the release, does it make any difference whether W. W. Culbertson was worth a cent or a million dollars at the time it was made by Thomas W. Means to him?

A. The question is hardly full enough.

X Q. 419. Please answer it?

A. It makes the difference that Thomas W. Means might have obtained an asset of possible value, and, on the other hand, it might have been an asset of no value, and as there is a question as to whether the asset would have had value or no value, I cannot say that Thomas W. Means diminished his estate by releasing W. W. Culbertson.

X Q. 420. Is it not a fair interpretation of the instrument that we intended to give him that much?

Objected to.

689 A. I have not seen the instrument.

X Q. 421. If the instrument is, as I stated to you, is not that interpretation a fair one?

A. It is a release from future liability, the one I understand the statement to have been made, and I again state that it is questionable whether Culbertson would have had sufficient assets to have met the liability in case it had not been released.

X Q. 422. Are you not dodging the question, Mr. Means?

A. I think not.

X Q. 423. I have not asked you anything about the solvency nor insolvency of Mr. Culbertson, and you do not know anything about it. I will ask you again if the fair interpretation of that paper, made by Thomas W. Means, in consideration of one dollar, is not that he intended to release, or, rather in fact, give to W. W. Culbertson all the money that he had sunk in the Buena Vista venture?

A. I don't see how a man could give money when it was lost. He could release the liability; that is all I could see in it.

X Q. 424. Is not that in effect giving it to him—releasing a man from $100,000.00 debt; is that not in effect giving it?

A. As to the legal effect, I cannot say. As to my own individual opinion, I have given it in one of the previous answers.

X Q. 425. Now, Mr. Means, this record shows that Thomas W. Means did release, agreeably to the testimony of John Means, nearly, if not more than $100,000.00 of indebtedness. This settlement shows that after the death of Thomas W. Means, William Means is charged with $136,000.00 against his distributable share. Does that look equal or fair, taking into consideration the will of Thomas W. Means in which he expressly states that the amounts advanced, in addition to what he has already advanced, from time to time, should not be charged against the distributable share of said heir, but should be taken and considered as executed gifts?

Objected to because the record does not show, as counsel for respondents understand, that John Means has testified that Thomas W. Means released over $100,000.00 to Mr. Culbertson, and because the question is argumentative, calling for a legal opinion, instead of for a fact, and because incompetent and irrelevant.

A. Thomas W. Means, so far as I know, controlled his own estate, and I think that it was fair that he could do with it as he
690 pleased, and in the interpretation of his will, I believe that the amount of $136,000.00 should be charged to William Means.

X Q. 426. This $136,000.00 was charged against William's distributable share after Thomas W. Means' death, was it not, by his administrators with the will annexed?

A. It was charged. The amount of the note and interest due from William Means to Thomas W. Means was charged to William Means by the administrators of Thomas W. Means, after the death of Thomas W. Means.

Re-examination by Mr. ANDERSON:

Q. 427. At the time the will was probated, and you appointed with Mr. Adams administrators with will annexed of Thomas W. Means, I believe you have stated, or Mr. Adams has stated, that Mr. William Means was present in court.

A. I think I stated so, that I thought he was.

Q. 428. Did he, or any one for him, offer to have him act as executor under the will and to qualify?

A. Not that I saw or heard.

Q. 429. Was there any objection made there publicly to him, or otherwise, by you or Mr. Adams, or any party representing Mrs. Adams, Miss Margaret Means, John Means or Mr. Culbertson as you are aware of?

A. Not that I am aware of, or was aware of at the time.

Q. 430. Did you, on that occasion, solicit William Means to revoke the revocation?

A. I did not.

Q. 431. Did Mr. Adams in your presence?

A. Not in my presence.

Q. 432. Did Mr. Hager, as acting for you, or both of you, do so in your presence?

A. He did not.

Q. 433. State whether or not the matter of the making of the $136,000.00 receipt, and the $26,000.00 receipt, and all the negotiations relative thereto that took place on the 4th of October and the 16th of October, proceeded from William Means or his counsel.

A. It all proceeded from William Means and his counsel.

Q. 434. Was there any arrangement, of which you and Mr. Adams were the movers, to bring about either the meeting of October 4th or October 16th?

A. There was not.

Q. 435. The order of June 16th, 1890, I understand was in
691 your possession, and that of Mr. Adams, prior to your appointment as administrators?

A. It was.

Q. 436. And after your appointment as administrators, the endorsement upon that order was made by you and Mr. Adams?

A. It was.

Q. 437. How soon after the court appointed *to* did you give the bond, and qualify as administrators. Was it on that day, or the day following?

A. I don't recollect whether it was on that day or the day following.

Q. 438. Did Mr. Adams, at the time of the signing of the two receipts of October 16th, 1890, or prior thereto, consent or assent that the $26,000.00 receipted for, or any part thereof should be paid to William Means?

A. There was no assent, or no intimation that the $26,000.00 or any part of it should be paid to William Means by the administrators.

Q. 439. Did he assent or consent that it should be paid to John Means, Margaret Means, or Mary A. Adams?

A. He was willing that it should if the refunding bond was obtained and turn-d over to us.

Q. 440. Has, in fact, any of the $26,000.00 ever been paid to Mary A. Adams, John Means, or Margaret Means?

A. Nothing; not a cent of it.

Q. 441. Did you understand, at the time of the signing of the two receipts, October 16th, 1890, or prior thereto that the fact that William Means signed the receipt and made the settlement as of the 6th of October, that it took from him anything that he had not already parted with or become liable for by the giving of the notes; if so, state what.

Question objected to as being in chief, and as leading.

A. I did not understand that William Means was parting from anything, or giving up anything that he was not liable for as I understood the will.

Answer objected to as irrelevant and incompetent because it gives the opinion or understanding of the witness as to a liability created by writing.

Q. 442. You have answered, as I understand it, to the effect that you knew of no reason why William Means should rely on his father's estate because you supposed him capable of earning a livelihood for his family. Do you wish to be understood by that, that he had an estate, such an interest in the estate of his father
692 that he could rely on it to the extent of $136,000.00, had he not given that receipt; if not, state what you meant.

A. I understood that William Means was one of five heirs, and over and above his indebtedness, which was a legal offset to his share in the estate was all he was entitled to out of the estate, regardless of the receipts, the receipt being a confirmation on his part that I would have expected to have been awarded to the estate in the matter of an offset.

Question objected to as irrelevant and incompetent; objected to because it does not call for any fact, but for the opinion of witness.

Answer objected to because it gives the opinion of witness, and does not answer any fact.

Q. 443. Questions have been put to you, and answered in regard to the penniless condition of the family of William Means. Do you know anything about the financial condition of his wife and children, personally?

A. I believe that Mrs. William Means is a stockholder in at least one corporation, that she has a large home. I do not know, though, whether it is free from mortgage or not.

Question and answer objected to as irrelevant and incompetent, but the complainants will, at the proper time, in rebuttal, show that they have no means of support.

Q. 444. Some questions have been put to you about some remarks in the meeting of October 16th, at the hotel referred to, relative to the wife and children of William Means. State what you can recall of what was said upon that subject.

A. The conversation that took place was in relation to the unpleasant relations existing between William Means and his wife, and perhaps some incidents to illustrate.

Q. 445. State whether or not anything was said in that conversation that Mrs. Means and her children, or either of them, were claiming an interest in the share of William Means in the estate of his father.

A. There was nothing said about their claiming an interest in William Means' share in Thomas W. Means' estate.

Q. 446. Was there nothing said in regard to a trust, or difficulty that might arise out of litigation upon their part by reason of an existing agreement between William Means and his children?

A. There was nothing said. I had no knowledge at that time.

693 Q. 447. Did not Mr. Williams and Mr. Baker, at that time, state to you that a suit was about to be brought to enforce it and that there had been an agreement made by William Means to execute such a trust; that he had in fact executed it?

A. There was nothing of the kind said.

Q. 448. Not a word said about it?

A. Not a word about trust.

Q. 449. Nothing said on the 16th of October, 1890, at the meeting at the hotel at which Mr. Baker, Mr. Williams, Mr. Means and yourself were present, in regard to any trust or any enforcement of a trust or any existing trust?

A. There was nothing said about any trust or enforcement of trust, or existing trust.

JAMES BULL, being by me first duly sworn, testified as follows:

Direct examination by Mr. ANDERSON:

Q. 1. State your name, age, residence and occupation?

A. James Bull; residence, Hanging Rock, Ohio; age, 48 years; secretary for the corporation of Means, Kyle & Company at Hanging Rock.

Q. 2. How long have you occupied that position?

A. Since April, '88.

Q. 3. What was your business next prior to that?

A. I was book-keeper for Means, Kyle & Company.

Q. 4. The same corporation?

A. Yes, sir. From the organization of the corporation until that time.

Q. 5. What prior to that?

A. I was storekeeper at their store at the mine at New Castle two miles back from Hanging Rock.

Q. 6. For how long?

A. For nearly three years. From the fall of '68 to the summer of '69.

Q. 7. What did you do prior to that?

A. Prior to that I was employed by John Ellison & Company, predecessors of the Russell iron works, as storekeeper.

Q. 8. For how long?

A. I think I was there nearly four years.

Q. 9. How long were you acquainted with Thomas W. Means prior to his death?

A. While I was at New Castle I saw Mr. Means occasionally but knew very little of him. I saw and knew a great deal of him from July on, in 1869, as long as he lived at Hanging Rock. I
694 entered the office at Hanging Rock in July, 1869, shortly before the old stockholders sold out and the change was made.

Q. 35. Were you present or have you any knowledge of the transactions at the time that the property of Means, Kyle & Company was sold for $710,000, when the partnership was dissolved and soon after which the corporation was organized; if so, state?

A. I was at Hanging Rock and in Means, Kyle & Company's office when that sale was made.

Q. 36. Do you know whether there was any complaint as to any of the persons composing the partnership, made by Thomas W. Means; if so, against whom did he make complaints and what were they?

Question objected to as wholly irrelevant and incompetent and having no bearing upon the issues in this case.

A. Business at that time at Hanging Rock, New Castle and Pine Grove was under the control of R. D. Lewis, one of the firm. Mr. Means was very much dissatisfied with him and his management and seemed determined upon getting him out of the road. Well, it seemed to be a great deal in Mr. Lewis' treatment of Mr. Means as well as his management of the business.

Q. 37. Do you know as to what branch of the business, if to any particular branch, Mr. Means complained that he was not doing right; if so, state?

A. Mr. Lewis had the immediate control of the coal business and my remembrance is that Mr. Means was dissatisfied with his way of managing that, particularly with that part which related to selling coal to steamboats.

Q. 38. How, if you know, did William Means stand with reference to Mr. Lewis?

A. Well, they stood shoulder to shoulder. William Means and R. D. Lewis backs one another up in anything.

Q. 39. State, if you know, whether this caused any feeling for the time being between Thomas W. Means and William Means?

A. Thomas W. Means seemed to feel hurt that his son should side with a man that he disliked so, and with a man that disliked him, for R. D. Lewis was not very particular about concealing his dislike of Mr. Means.

Q. 40. Did he conceal it at all?

A. I don't think he did.

Q. 41. What took place after that, if you know, with reference to the trouble or feeling that was created between William Means and Thomas W. Means?

695 A. It culminated in the sale of the proper-y and William Means and R. D. Lewis going entirely out and Mr. Thomas W. Means obtaining the entire control.

All questions and answers of witness relating to Lewis or coal transactions or difficulties between Lewis and Thomas W. Means and William Means are objected to as incompetent and irrelevant and have no bearing upon the case at issue.

Q. 42. State, if you know, what the habit or disposition of Thomas W. Means was as to being a man of resolution and determination, or was he pliable and molded by any person who happened to be talking to him?

A. He was like Pollie Martin's dog, he had a head of his own and generally followed his own ideas and I have no idea that he was influenced very much by anybody against his own conviction.

Q. 48. The record in this case shows that James Bull has written or made a great many entries for a considerable period in the books of Thomas W. Means. Are you the James Bull that made the entries?

A. Yes, sir.

Q. 49. At whose instance did you act in that capacity?

A. That of Thomas W. Means.

Q. 50. Were you aware, while making the entries upon those books under the accounts of John Means and Mary A. Adams and Margaret A. Means and William Means, that the items charged to them were gifts or not? State any information that you may have upon that subject?

Objected to as leading, irrelevant and incompetent, as the books show for themselves.

A. I think I understand Mr. Means' plan. He kept an account with each of his children on his ledger and whenever anything was paid out for them, it went on these accounts and he has told me that he intended after his death that his property should be divided equally among all his children, that they should share alike and he was keeping his record to show how much each one was getting from time to time. My remembrance is that no interest was to be charged. They were only charged with the principal that was given at the time.

Answer objected to because the books show for themselves what the intention of Thomas W. Means was, and also to that portion of the answer as to the statement of Thomas W. Means in regard to making his children equal; Thomas W. Means having left
696 a will, it is shown there what his intention was and Mr. Bull will probably not be able to make it over for him.

Q. 51. At the head of these several accounts that I have called attention to—for instance, to specify, the accounts on Journal A, Mrs. Jane Culbertson at page 280, John Means page 281, William Means 220, Margaret A. Means 320, Mary A. Adams 287, are entries to the effect or in exact words, in one case at least—"No interest shall be charged on this account on final settlement or at any other time. Thomas W. Means." Do you know in whose handwriting those entries are, when they were made and signed? Suppose you examined them now on the books you hold?

A. They are all signed by Thomas W. Means himself. I recognize his handwriting. One of those statements is in Mr. Means' own handwriting and the other are in E. B. Willard's handwriting. One of them was made after I came into the office. The one that is in Thomas W. Means' handwriting was written after I came into the office and the others were written, I believe, before I came into the office—the one in pencil—on the account of Margaret A. Means, page 320, that was written after I came into the office.

Objected to because the entries and written statements over the accounts of each person named show for themselves, the books being in evidence and have been fully proven by John Means.

Q. 52. Here is page 19. Whose handwriting is that?

A. Thomas W. Means' own handwriting, account of John Means.

Q. 53. Page 281?

A. That is E. B. Willard's handwriting and Thomas W. Means' signature.

A. C. CAMPBELL, being by me first duly sworn, testified as follows:

Direct examination by Mr. HAGER:

Q. 1. State your name, residence and occupation.

A. A. C. Campbell; Ashland, Ky.; banking business, long enough to call that my trade, I reckon.

Q. 3. Were you ever in the employment *in* the firm of Means, Russell and Means, at Bellefont, and if so, state when and for what length of time?

A. I went there on the 24th day of March, 1859, and staid until the 4th day of October, 1866, about seven years, I think.

Q. 4. After that, what was your business engagement?

697 A. I went to the Bank of Ashland in October, 1866, as perhaps book-keeper and teller. In '68 I was elected cashier of the Bank of Ashland and in '72 we reorganized that bank into the Ashland National bank and I staid there until the 1st of July, 1882, and then I went to Catlettsburg and opened that bank the first of July, 1882, and was its cashier until the spring of 1890.

Q. 5. And after that time?

A. After that time I came here and became connected with the Merchants' National.

Q. 6. Been the president of that since its organization?

A. Yes, sir.

Q. 7. State, Mr. Campbell, if in the month of February, 1888, or about that time, as cashier of the Catlettsburg National bank, you made a loan or discount upon a ten-thousand-dollar note of Thomas W. Means dated the 17th of February, '88, and if so, the circumstances connected with that transaction.

A. Well, a few days previous to the 17th I met Mr. Thomas W. Means himself on the street and was talking about his affairs. He said he would perhaps need some money and I told him I could let him have it if he wanted it, and walked down the street with him

and I don't think he went to the bank. I afterwards met Mr. John Means and I suggested to him I could lend him some and he asked how much. I told him I would let him have what he wanted. He asked me if I could let him have as much as $15,000 and I told him I could. He prepared two notes in the presence of Thomas W. Means at the bank and handed them to me and I took them and after he came to Catlettsburg I saw one of the notes was not endorsed, so I only took one of the notes, $10,000, and returned the other, telling him we were a little short that day—they had used some during my absence—and that if he would wait a day or two I could give him the balance and he did not get the $5,000 but he got the $10,000 discounted on the 17th of February, '88, on demand.

Q. 8. Do you remember how that note was signed?

A. I think I can refresh my memory. It was signed "Thomas W. Means by John Means as attorney-in-fact."

(Witness refers to letter.)

Q. 9. Do you remember as an independent fact that you talked at all about a matter of that nature with Thomas W. Means before you discounted that note?

A. Yes, sir. He was present when the note was made and security turned over.

698 Q. 10. Did he say, or did you understand from him, the object or purpose that he had in getting that amount of money upon that note?

A. That he wanted to pay it for William Means—pay it on his debts. He said he wanted to get it to pay on William Means' debts.

Q. 33. I believe you were one of the appraisers of the personal estate of Thomas W. Means?

A. Yes, sir.

Q. 34. State the fact with reference to the appraisement of the notes?

A. When the notes of Mr. Means were presented, the question came up as to their value and what we would put them in at, and I told them to put them in at par. One of the appraisers questioned as to the value and I told them that I had never heard of Mr. Means' notes other than good and we put them down at the face value.

The questions and answers of the witness in regard to the appraisement of William Means' notes or anybody else's notes *is* objected to as incompetent, as irrelevant and not bearing upon the case and nothing to do with it in any way, shape or form whatever.

Q. 35. If, after making the appraisement, you had any conversation with William Means with reference to your action or the action of the appraisers in appraising his notes at par, state what that conversation was, and what was said by William Means in reference thereto.

A. I met Mr. Means a short time after that and he was talking about the appraisement and asking about the amount there was and I told him the action we had taken in regard to his notes, putting

them at par and asking him if that was right, and that I had insisted on putting them in at par and he said that that was right to appraise them as we did. This was shortly after the appraisement.

Q. 36. And where?

A. I think it was here in Ashland; yes, sir.

A. E. LAMPTON, being by me first duly sworn, deposes as follows:

Direct examination by Mr. ANDERSON:

Q. 9. Were you ever called upon to witness any papers signed by William Means; if so, when?

A. I was called upon twice to witness papers signed by William Means. They were two days apart. I forget the dates I would know the papers if I saw them. I recognize that as one of the
699 papers and this as being the other. (Witness being handed receipt for $26,000 and one for $136,000.)

Q. 10. Here are two receipts of October 18th, 1890, and also another receipt marked "copy." One of the receipts first named is marked "duplicate." The one marked "copy" is identified "T. M. A. Dep'n Ashland, Ky., May 17th, '93. Signed Oct. 16, '93, by W. M." Who wrote the signature on that receipt?

A. I wrote the signature on the face.

Q. 11. What is the one you wrote?

A. A. E. Lampton.

Q. 12. Now, these other two are also signed by William Means and they are identified, and the one above referred to, and as signed by William Means, October 18, 1890. Who made the signatures as witnesses on each of them?

A. I witnessed both of them.

Q. 13. Do you recollect that they are the receipts, or some of them, that you signed upon this occasion?

A. I recognize the receipts and the signatures.

Q. 14. Which was signed last, if you recollect?

A. I would not know except from the dates, but this one was signed last, according to my recollection (refers to one signed on 16th).

Q. 15. State what is the fact as to whether these receipts dated the 18th of October, whether they were all signed upon that date or not?

A. There was an interval of two days between the signing of the one and the other.

Q. 16. Can you state which receipt was signed on one day and which was signed on the other by looking at them; if so, state?

A. No, I don't think I could. I witnessed the signing of all of the receipts. I was called to witness the signatures and not the contents and I did not charge my memory with it.

Q. 17. There is also a receipt here for $136,000 and something. It is witnessed by yourself and who else?

A. John F. Hager. This was the first receipt that was signed. John F. Hager witnessed it and I witnessed it. He did not witness the second paper that I witnessed. One was at the drug store and the other at the house.

Q. 18. Then the papers that were signed at the house, were they signed before or after the one that was signed at the store?

A. Before.

Q. 19. And how long before, you say?

700 A. Two days.

Q. 20. Do you know anything of the circumstances under which they were signed? Who called upon you to witness the first papers?

A. Well, there was Tom Adams called upon me to witness them.

Q. 21. Who called upon you to witness the second paper?

A. The same gentleman.

Q. 22. Who was with him?

A. William Means, and I believe Cook was with him. I am not positive about Cook Means.

JAMES HUDSON, being by me first duly sworn, testified as follows:

Direct examination by Mr. ANDERSON:

Q. 1. State your name, age, residence and occupation?

A. James Hudson; live at Hanging Rock; 56 years of age. Hanging Rock is my place of residence and I have been employed there by Means, Kyle & Co. for a number of years and at present have charge of their works when Mr. Willard is away. He is president of the company and I have been manager under him for a number of years.

Q. 2. Well, you know Thomas W. Means, did you?

A. Yes, sir.

Q. 3. For how long a period?

A. Ever since I was a little boy. I remember him for thirty-five or forty years.

Q. 4. How long have you been connected with this company?

A. I have worked with the corporation of Means, Kyle & Co. since it has been organized.

Q. 5. Did you work for the partnership before the corporation was organized?

A. Yes, sir.

Q. 6. For how long?

A. During its existence, a couple or three years.

Q. 7. You saw, then, a good deal of Thomas W. Means?

A. Yes, sir.

Q. 12. You were a stockholder in the corporation?

A. Yes, sir.

Q. 13. From its organization?

A. Yes, sir.

Q. 14. You have attended its directors' meetings and stockholders' meetings?

701 A. I have attended the most of the stockholders' meetings.

Q. 15. Are you a member of the directory?

A. No, sir.

Q. 25. Well, was he a man easily molded by any one with whom he was, or was he hard to move? State the fact, whichever it is.

A. Well, I don't think that they would move him unless it would be a mighty good friend. He might take some man's advice but after he was set in his ways, you could not handle him. I don't think you could.

Q. 26. Was it his habit to consult with persons in whom he had confidence, or not, about business questions?

A. So far as I know, he did not consult with but very few. So far as I know, all the consultation I knew him to consult would be with Mr. Willard or his son John.

Q. 27. Mr. Willard, whom do you mean by that?

A. Eugene Willard.

Q. 28. Who was he?

A. He was the man that had charge of the corporation at Hanging Rock that the old gentleman was president of at that time.

Q. 29. Do you recollect anything about the sale of the property when it was sold for $710,000 and the partnership company very soon after that came to a close and William Means and others went out and the corporation was formed?

A. Yes, sir; I do; I was there.

A. 30. What do you know about that matter? How did that sale happen to come about?

A. From what I know about it, the company, Mr. Means objected to the manager of the company, Mr. Richard Lewis. Him and Mr. Lewis did not get along very well together. Mr. Means objected to his management. I heard him say Mr. Lewis would never manage the corporation of Means, Kyle & Company longer—not for him.

Q. 31. It was not a corporation at that time?

A. Means, Kyle & Company—I think it was. It was not Means, Kyle & Company—let's see—yes, it was a corporation at that time.

Q. 32. The corporation, I understand, was formed after the sale?

A. I may be mistaken. I don't know about that. I won't say. I don't know whether it was a partnership or not.

702 —. 33. The sale had not taken place yet, the $700,000 sale?

A. No, sir.

Q. 34. What position or attitude with reference to that matter did William Means occupy, if any?

A. He took Mr. Lewis' part.

Q. 35. What effect did that have upon the old gentleman?

A. His father and him disagreed on it, and it was generally understood among the men that it hurt the old gentleman pretty badly, that is all I can tell you. It hurt the old gentleman a good deal.

All questions and answers relating to the sale of Means, Kyle & Co. and to conversations detailed by the witness in regard to Thomas Means and Lewis, and in fact all the conversation detailed in the foregoing answers *is* objected to as irrelevant, as incompetent and having no bearing upon the issues in this case.

Q. 36. After that sale, state whether or not William Means and Lewis remained to have an interest in it?

A. No, sir; Mr. Thomas Means bought the property in and the company was formed afterwards, William Means and Richard Lewis and a man, I believe by the name of Wilmer, going out.

Objected to for the same reasons.

Q. 37. Do you know anything about the condition about the coal banks at the time that that trouble took place? Who was managing the coal department?

A. Mr. Lewis.

Q. 38. What was the condition of the coal bank- at that time, if you know, as to whether they were in a proper condition or not?

A. Mr. Lewis was not a practical coalman and did not have the banks in proper shape. I could not tell you anything about who complained about it.

Q. 39. You know the facts that the banks were not in good shape?

A. Yes, sir; I was at the other end.

Objection is entered to all questions and answers in regard to the coal banks as irrelevant and incompetent.

HENRY HANNA.

Direct examination by Mr. HAGER:

Q. 1. Please state your age, place of residence and occupation?

A. About 80 years old—very little from that either way. I live in the city of Cincinnati and I am not engaged in any particular business.

703 Q. 2. Are you the same Henry Hanna whose name appears as surety of William Means on three several bonds here in this court?

A. Yes, sir.

Q. 3. State the knowledge you have, if any, concerning the payment of certain notes of William Means to the Metropolitan bank and James McConville, receiver of said bank, on or about February 15th, 1888?

A. Well, about February, 1888, about the middle—no, before the middle of February, because the date I executed this was on the 15th. It must have been the 12th or 13th or 14th of February—12th or 13th probably I was called upon by probably Mr. John Means here. I had a consultation with him in the Citizens' National bank, where we had our consultations and probably with Mr. Sinton at the same time. Mr. Means' object was to save his brother from the danger of indictments and being punished for the course that he was pursuing—him and his associates—which caused their indebtedness to the Metropolitan National bank and he expressed a willingness after the consultation probably with—I probably may have been present at the consultation—with the bank examiner, because the bank was then in the hands of the examiner. This

man had not taken hold and he came here to take hold. That if Mr. Means' indebtedness to the bank was taken up, that he would be relieved from any criminal prosecution. I think that that was the object of Mr. John Means and after a second time—probably a second visit here—John Means asked me if I would go down to the Grand hotel and see his brother—see William Means—and ask him if he would sign a paper that they had drawn up there—I think it was drawn up at the bank—giving over all the securities that he had the funds for—I could not tell what they were; I had a list of them all—if he would do that, that they would pay his indebtedness to the bank. I think that that was about the substance of it. I went down and seen William Means and had a talk with him and he signed this power, whatever it was, giving authority to get possession of these securities. This Mr. John Means did through the examiner. That was February 15th. I have got the check in my pocket that I gave on that day. Mr. Sinton and I paid to John Means on that day. I have got that check in my pocket.

Q. 4. State if you know, whether the indebtedness of William Means to the bank was paid before or after you brought that authority to the examiner or receiver to surrender the securities?

704 A. Oh, it was done afterwards, because the bank examiner would not give up these securities. They were in his possession and he would not give them up without the assent of William Means. I brought up that assent.

Q. 6. Do you state as a fact, Mr. Hanna, that it was a subject of general discussion among the friends of William Means that it was desirable that he should pay that debt to the bank as a probable means of relieving him of the trouble or danger of prosecution?

Objected to because leading and suggestive of the answer.

A. I don't know how many friends there were but there was Mr. Sinton, probably, and John Means, and I don't know who they were, that was the representations made to me that their attorneys, whoever they were, that if that debt was paid—and I think the examiner of the bank acquiesced in that—that if that indebtedness was taken up, it would be the means of relieving them from criminal prosecution.

Q. 7. At the time you went to see William Means on the 15th of February and procured from him the authority you speak of for the surrender of these properties, did you then say to him that his notes had been paid?

A. I do not think that they had been paid. I could not have said it to him because they had not been paid. They were in the hands of the bank examiner and you could not get them. They would not give them up until they had that authority.

Q. 8. Did you see Evan F. Williams at the time you called at the Grand hotel to get that authority from William Means?

A. I don't have any recollection of ever seeing Mr. Williams or knowing him, anyhow—I may have seen him—until the trial of William Means in this house, in this room. I have no recollection of seeing him or knowing him.

Q. —. I will ask you if at the time referred to in the last question, William Means asked you if that settled everything, if he was a free man, and that you told him that he was.

A. That was my impression, that he would be a free man if that was the only indebtedness that the bank had. That was the only claim to an indictment that I know of or any of us knew of at that time and if I said anything, I said something of that kind. I cannot recollect what conversation just happened between William Means and I at that time. My recollection is not very distinct.

705 That is my recollection about it, that if that indebtedness was taken up that the bank had against him, that he would be released. I think that that was the ground that John Means and his friend went on.

Q. 10. Have you today the check which you gave to John Means on the 15th of February, 1888?

A. I have the check. To refresh my recollection I went and hunted it up.

The check is produced and the examiner is asked by counsel for respondents to identify the same and copy it in the record as a part of the testimony of Mr. Hanna. The check is marked: "Cin'ti, June 21, '93. B. Perin, sp. ex." Copy of the same is as follows:

CINCINNATI, *Feb'ry 15th*, 1888.

Citizens' National bank pay to the order of John Means, fifty thousand x-100 dollars.

$50,000. HENRY HANNA.

Stamped in red ink across the face: Citizens' National bank. Good for $50,000.00 when properly endorsed. Geo. W. Forbes, Cincinnati, Ohio.

Endorsed: "John Means."

Red stamp on the back: "First National bank, Cincinnati, Ohio. Paid February 15, 1888."

Q. 11. I hand you a note dated Cincinnati, Ohio, February 15, 1888, reading as follows:

$50,000.

One day after date I promise to pay to Henry Hanna or order fifty thousand dollars. Value received.

THOS. W. MEANS,
By JOHN MEANS,
Att'y-in-fact.

and asked you, Mr. Hanna, if that was the note in consideration of which you executed the $50,000 check identified by you just now?

A. I have no means of recalling that particular note. My handwriting is not in that note. John Means' handwriting is there, but my handwriting is not in that note. I presume it is the note, but I could not identify it. When I went home probably I gave this check that I spoke of—I gave it away from home, I gave it at the bank—when I went to the house, I find this entry on my books, "Feb'ry

15th, 1887, lent Thomas W. Means $50,000 and took note payable one day after date endorsed by John Means." I have no
706 means of identifying that note. I have no doubt it is the note. It is the same date and same amount.

Q. 12. I hand you a letter written on the letter-head of the Citizens' National bank, dated Cincinnati, February 23rd, 1888. State in whose handwriting that letter is.

A. This letter was written by me. It is all my handwriting. When Mr. John Means paid this I wrote a receipt for the money, that I had received it.

ROBERT H. ELLISON.

Direct examination by Mr. ANDERSON:

Q. 1. State your name, age, residence and occupation.

A. Robert H. Ellison; Manchester, Ohio; forty-eight years; farmer.

Q. 6. State what was said and under what circumstances.

A. In the afternoon, before the funeral, in the upstairs room Mr. Archer Means and myself, and Evan Williams and William Means were in the upstairs room. Mr. Evan Williams I know came up there, and he said to Mr. William Means that Mr. Whitaker was in town.

Q. 8. Was anything said about what he was there for, and, if so, state.

A. The impression I got from it was that there was a suit between Mrs. Martha Means and Mr. William Means.

Q. 9. Was there anything said about any claim of the children of William Means in your presence?

A. Well, I believe there was talk about a suit of Mrs. Martha Means and the children.

Q 10. What was said, if anything?

A. That he was there to see something about the suit and that they did not think he would come to the house. He did not come.

Q. 11. Well, was Miss Maggie Means upstairs?

A. I do not think there was any one present except the ones I named.

Q. 12. Was that the only conversation that was had upon that subject during your stay there?

A. It was, with them. That talk ran along for an hour.

Q. 13. Was that all the time in that room?

A. Yes, sir.

707 Q. 14. Neither Mrs. Adams or Miss Means was present?

A. No, sir.

Q. 15. Was Tom Adams present?

A. No, sir.

Q. 16. Was Cook Means present?

A. No, sir.

Q. 17. There was none of the rest of the Means family?

A. Not that I have any recollection of.

Q. 18. State whether anything was said with reference to Mrs.

Martha Means, or the children having any interest in the suit. Or whether they were seeking to enforce.

A. I understood it was a suit of Mrs. Martha Means—Mrs. William Means—to secure some money from William Means, if he had any left, interest he might have in the estate.

Mr. WHITAKER: You spoke something about being left. What do you mean by that?

A. Whether it was coming to him, or whether Mr. Means had loans from the estate, or loaned the estate quite a sum of money. My understanding at that time was that Mr. William Means had loans from the estate for a large amount, and whatever was left, if anything, was due him.

Q. 19. State then, what your understanding was with reference to the thing they were trying to get.

Counsel for complainants object to what the witness' understanding was unless he knows the facts.

A. My understanding was that Mrs. Means' children that brought the suit, tried to get any moneys that might be due William Means after what he owed the estate was paid.

Q. 20. Now, from whom did you get this understanding?

A. Well, I have talked to pretty nearly all of them.

Q. 21. In this conversation that you speak of?

A. There were just the same parties that I speak of that were there. Mr. Archer Means, myself and Mr. William Means were in the room together, and Mr. Evan Williams in the forenoon. We were all there for I expect an hour.

Q. 21. Now, then, I will ask you this question. Mr. Evan Williams has testified in answer to question 1028 on cross-examination in this case: "X Q. 1028. Go on and state what you said.
708 A. I told them that Mr. Whittaker was here with reference to the claims of the children to the estate of Thomas W. Means. That is the substance. X Q. Is that what you said to William Means in the presence of Miss Margaret Means and Mrs. Adams? A. Yes. X Q. And no other persons present? A. There were no other persons present. X Q. Who was present besides? A. I cannot say certainly that Mr. Adams was present, but I think there was a red-whiskered gentleman there named Ellison from Manchester. They all knew Whittaker was there and there is no doubt about it. X Q. They knew he was there? A. Yes, sir; and his mission too. X Q. You think Mr. Adams was there and Mr. Ellison? A. I think so, but it is impossible to recall who were present. X Q. Mr. Robert Ellison, of Manchester, wasn't it? A. I think that was the gentleman's name. I am not sure. My recollection is that they were present. I am not so positive about all who were there. There was quite a group when I announced to William Means that Mr. Whittaker was there."

Q. 22. I will ask you if any such statement as that was made in the presence of Thomas M. Adams, one of the defendants in this case?

A. I think not; in fact, I almost know so. Mr. Adams came

through the room once or twice, but he did not take any part in the conversation with us four.

Q. 23. Were you ever present prior to the death of Thomas W. Means when he signed or executed any paper; if so, when and what was the paper, say within two or three years of his death?

A. I was present when he directed Mr. John Means to execute the power of attorney.

X Q. 64. Was there anything said about a trust created in favor of Mrs. Means and her children by William Means, out of the interest of William Means in that estate?

A. No, sir, not that I recollect of it.

X Q. 65. What was it Mr. Whitaker was there claiming?

A. Well, it was a suit that Mrs. Means and the attorney for the children was trying to bring against William Means or had brought against William Means in whatever interest he might have left in his father's estate.

X Q. 67. Don't you know that it had not been brought, as a matter of fact, to enforce any trust against William Means' interest in his father's estate in behalf of his wife and children?

709 A. That was the object supposed to be what it was for. I did not know anything about it.

X Q. 68. Was not the talk you heard about a suit that was to be brought to enforce it, instead of a suit actually existing?

A. I could not say whether the suit had been brought or was about to be brought to enforce it.

X Q. 69. I understood you to say it was brought and it was a suit against William Means' interest in the estate in behalf of his wife; was it brought or about to be brought?

A. It was about to be brought.

X Q. 134. I understand, then, by your testimony, that you and the Means family did know that there was an effort being made upon the part of William Means' wife and his children to secure William Means' interest in his father's estate, do I? Is that the testimony?

Question is objected to in its assumption that there was such knowledge on the part of the Means family if by that is meant to include any other than Arch and William Means.

A. Mr. Arch and William Means knew it.

E. B. WILLARD, called on behalf of the defendants, being by me first duly sworn, testified as follows:

Direct examination by Mr. ANDERSON:

Q. 1. State your name, age, residence and occupation.

A. E. B. Willard; age, 50; residence, Hanging Rock, Ohio; superintendent for Means, Kyle & Company, mining and manufacturing business.

Q. 2. What is your relation, if anything, to any business in which the Meanses are interested?

A. Well, I have been superintendent for Means, Kyle & Co

They own the majority of the stock in that corporation. I have been the superintendent there for 24 years. I was in their employ previous to that.

Q. 3. In what capacity were you acting from the start? Just give a general statement.

A. I first went to Ohio furnace as clerk. From there I went to the general offices as cashier. Then the concern was incorporated and I was secretary and treasurer and general superintendent. After a while I was made president, and I still hold it and act in the capacity of general superintendent.

Q. 4. What year, as nearly as you can tell, was the partnership changed to the corporation of Means, Kyle & Co.?

710 A. The proceedings were commenced to incorporate in 1869, but the incorporation was not perfected until 1870.

Q. 5. Who were members of the partnership before the corporation was organized; that is, before the sale of the partnership property?

A. Thomas W. Means, John Means, William Means, John Kyle, George Slemmer, Samuel B. Hempstead, and Richard D. Lewis.

Q. 6. Any others you think of?

A. I believe that that is all that were in the partnership.

Q. 7. I will ask you if Mrs. Hempstead was?

A. Mrs. Hempstead was. I gave Samuel B. Hempstead, but strictly speaking he was not a partner at all. It was his wife.

— 8. Did you know anything of the trouble which brought about the sale of the property of the copartnership and the time that William Means went out?

A. I don't know as it could be called a trouble. The partnership expired by limitation at that time.

Objected to as irrelevant and incompetent and having nothing to do with the issue in the case now pending.

Q. 9. State, if you know, what caused the sale to come about? What trouble, if there was any?

A. There was a division of opinion between the members of the partnership. William Means, Mrs. Hempstead, Richard Lewis and George Slemmer took one side and Thomas W. Means, John Means and John Kyle took the other side, and my understanding is that the division of interest grew out of, or originated from, the division of interest in the packet company. That seemed to be where the trouble originated from. One side were interested in the packet company and the other was not. A part of their business was to supply coal, and they supplied coal to the packet company and that created some feeling of interest on one part to have the packet company coal there, and on the other part there was no interest to have the packet company coal there.

Q. 10. You mean the Cincinnati, Portsmouth and Big Sandy Company, the steamboat?

A. Yes, sir.

Q. 11. What was the condition of the coal bunks at that time? Who had charge of that specially, if anybody?

A. R. D. Lewis was superintendent of the coal mine.

Q. 12. State what their condition was; whether they were in a proper condition or not, if you know?

711 A. When I took charge of the coal bunks the business was very much depressed, and the mines were in bad condition; that is, they were in bad condition to put out coal.

Q. 13. State whether you ever heard Mr. Thomas W. Means, prior to the dissolution of the partnership, make *make* any complaint about the coal bunks; if so, what did he say, in substance?

Objected to as incompetent.

A. I don't think I ever heard Mr. Means criticize the condition of the coal bunk at that time.

Q. 14. Do you recollect whether there was any disagreement between Mr. Means and Mr. Lewis?

A. Yes, sir. They were not on speaking terms towards the last; that is, Mr. Thomas Means.

Q. 15. Was that the state of affairs at the last, when Lewis had charge of the banks?

A. Yes, sir.

Q. 16. Can you state to how late a period Thomas W. Means was an officer in connection with that company; and if so what office did he hold?

A. He was president of the corporation from the time it was incorporated until he was last elected in 1888. He held office until the spring of '89.

Q. 17. You were a stockholder, yourself, at that time?

A. I was a stockholder the whole time since he was elected.

Q. 18. You attended meetings of the directors and stockholders?

A. Yes, sir; always.

Q. 19. Well, I will ask you, at whose motion, if you know, was Thomas W. Means elected president at this last time?

A. William Means made the motion. That was in the spring of 1888. Our annual meetings is held on the last Thursday of April of each year. That is our by-law and sometimes that may come one day and the next time may come later or earlier but it is the last Thursday, and at the annual meeting of 1888, William Means was present and elected director and he made the motion to elect Thomas W. Means president.

Q. 37. Do you know what was his habit as to consulting persons with reference to his business affairs, in whom he had confidence? If so, state.

A. Why, he consulted all of the gentlemen about the office there, more or less. We were all young men, that is, all a good

712 deal younger than he, and he was in the habit of relying a good deal on all the young men that were conducting the business there.

Q. 38. Prior to the time of his moving to Ashland, for a number of years before, what was his habit as to consulting persons and with whom did he chiefly consult about his business?

A. Well, I will say that his habit as a rule was to consult with

the man that was keeping his books. Now, part of the time I kept his books and part of the time Mr. Bull. He has been in the office there for twenty years or more. Part of the time he kept his books. His practice was to talk to the man that he would call on to do that business at the time.

Q. 39. With whom did he chiefly consult prior to going to Ashland?

A. Mr. Bull and myself.

Q. 40. By his books you mean his individual books?

A. Yes, his individual books. He always kept the individual book at the time I have known him.

Q. 41. What was his habit, when he would consult with persons; would he use his own judgment or would he follow theirs blindly?

A. I always thought he had a good deal of mind of his own.

Q. 42. Was he a man that was led by others, or did he lead others?

A. So far as my business relations with him were concerned, he followed his own mind.

Q. 43. What was his habit with reference to writing upon his books? Would he do it himself or would he have it done by others? How was it as to notes and checks and so forth?

A. He never wrote anything to my knowledge on his own books. He would ask any one who happened to be about to fill out a check, but he would always sign it himself. In all my business connection with him he never authorized me to sign a check though I have filled out numbers of them for him, and the same way in regard to a note; he would tell me to fill one out but he never authorized me to sign his name to anything.

Q. 44. State whether or not Evan Williams ever attended any of the stockholders' or directors' meetings of that company?

A. To the best of my recollection he was never present at a stockholders' or directors' meeting. That is, he was never in the room. I remember on several occasions that he came with William Means to Hanging Rock there; when William would
713 come up to attend meetings. But he never was present in the meeting. I am quite positive he never was present.

Q. 45. Can you state about what time William Means left Pine Grove furnace to go to Cincinnati or Yellow Springs to live?

A. Yes, sir. It was in the spring of '68. I went into the general office at Hanging Rock at that time and that was when he came to Cincinnati to take charge of the business here.

Q. 46. During the year 1878 and from that time until Thomas W. Means moved to Ashland, Ky., in '82, who managed his business—his own business?

A. He managed his own business so far as I knew anything about it. He had interest- that I did not know anything about excepting hearsay.

WILLIAM MOFFET, for defendants, being first duly sworn, testified as follows:

Direct examination by Mr. HAGER:

Q. 1. What is your age, Mr. Moffet, and residence?

A. I am 52; reside in Grundy county, Iowa.

Q. 2. State if you were employed by and assisted Mr. H. V. Sanders in the discharge of his duties as bank examiner from the time Mr. Sanders had charge of the Metropolitan Bank of Cincinnati, Ohio?

A. Yes, sir. I was employed by him and assisted him during that examination.

Q. 3. What length of time were you so employed by the bank?

A. I cannot recollect the day when we started or the date we started, but I was with him from the date that he went to the bank and till he got through entirely. That was probably about the 22nd of February. On that day I went home.

Q. 4. Give your best recollection as to the time?

A. It seems to me it was somewhere near the middle of January. According to my impression it was about the 19th or 20th of January, but I would not be certain about that. When we commenced, whenever that date was, I was there. That was in the year 1888.

Q. 5. What duties did you perform and were you called upon to perform there?

A. At the beginning I was with him in looking over the matters and making investigation into different things—listing notes and everything pertaining to the examination of the bank.

714 Q. 6. Did that examination include inspection of endorsements and collateral securities upon notes?

A. It did not so much include the endorsements as it did the securities themselves. That is the notes and the securities with them. The value of endorsements of things of that kind were left to parties who knew more about the local affairs than we.

Q. 7. Do you recall as a matter of independent recollection that there were notes of William Means in the bank at the time?

A. Yes, sir. There were quite a number.

Q. 8. State whether or not at the time of your first examination of the notes of William Means there were securities pledged as collateral for their payment?

A. No. There was nothing in the way of collaterals with those notes that I can recollect of at all.

Q. 9. State if after Mr. Sanders took charge of the examiner there were securities pledged as collateral for the payment of those notes, and what you know about them?

A. Well, when Mr. Sanders found the affairs of the bank were in a pretty bad condition he called in each of the directors and among them Mr. Means and insisted upon them putting up collateral to secure the bank in the amounts which they had borrowed of the bank. And I think every one of them complied—I know Mr. Means did—to some extent.

Q. 10. Did you see Mr. John Means in or about the Metropolitan bank shortly after the announcement of its failure?

A. He came there a number of times. I couldn't say what dates or how many times I saw him there, but I did see him there on several occasions.

Q. 11. Did you learn the purpose or object of his visits to the bank on or shortly before the 15th of February, 1888; if so, please state?

A. Yes, sir. Well, Mr. William Means' account was in a very bad condition for himself as well as the bank, and Mr. John was there with a view of getting it into better shape; in fact to take care of the indebtedness in some way.

Q. 12. By taking care do you or not mean that his object was to procure payment or settlement?

A. That was it. In fact to get it out of the way of matters that were standing then; to get it paid.

Q. 13. State whether or not you recall that there was a meeting in the Metropolitan bank in February, 1888, at which Sanders, 715 the bank examiner; McConville, receiver; Henry Hanna and John Means were present, and if you know the matter discussed by them at such meetings?

A. There was a number of conferences with Mr. Sanders. I do not remember of all those persons being there at any one of them excepting in the afternoon of a day not many days before the close of our connection with the bank, and on that day, not long after dinner, Mr. Sinton, Mr. Hanna and Mr. Means—Mr. John Means—came into the bank and retired into the directors' room with Mr. Sanders, and Mr. McConville was there preparing to take charge of the bank as receiver. I just simply state that they went into the directors' room. I do not state what took place in the room.

Q. 14. Did you know the purpose or understand the purpose of the conference at that time?

A. I understood I believe what it was for.

Q. 15. Just state then what it was.

A. It was for the purpose of taking up Mr. William Means' notes.

Q. 16. During the retirement of these gentlemen did you observe Mr. Henry Hanna coming out from that room?

A. After they had been in some little time Mr. Henry Hanna came out of the room, and came out of the bank-room, and inside of an hour he came back again and retired to the directors' room. He was not gone I do not think an hour.

Q. 17. After his return how long, or about how long, if you remember was it that the gentlemen you have named remained in that consultation-room?

A. They may have been there three-quarters of an hour. They were in there some little time after Mr. Hanna's return. They spent almost the whole afternoon there.

Q. 18. Who had charge of the moneys received by Mr. Sanders, the bank examiner, while he was in charge?

A. After he took charge of the bank I had charge of the money.

Q. 19. State when, with reference to that meeting you have just spoken of money or checks was paid to the Metropolitan bank on account of William Means' notes?

A. I received checks after the party had gone. Mr. Sanders gave them to me.

Q. 20. About what time was that, Mr. Moffet, if you re-
716 member?

A. It was between five and six o'clock, my recollection is, in the afternoon.

Q. 21. What did you do with the checks after so receiving?

A. That night they were placed in the vault of the bank.

Q. 22. Do you know whether they were collected and the proceeds applied on that indebtedness?

A. They were. I got that money in one-thousand-dollar treasury notes, most of it from the First National bank.

Q. 23. Do you have any knowledge as to where that money was gotten, or from whom that money was gotten by Mr. John Means; if so, you will please so state?

A. Well, I did not see them get it from any one, but it was understood by us there that Mr. Sinton, a life-long friend of Mr. Means, with Mr. Hanna, was going to try to save William Means the trouble by raising the money and taking up the indebtedness and taking it out of the way.

Q. 24. Did you know or did you have any knowledge that the money so paid was procured by John Means personally, or as an agent for his father?

Objected to as leading and incompetent. Question waived.

Q. 25. State, if you know, whether that money was furnished by John Means personally, or as agent for his father, or otherwise?

Counsel for complainants objects to the last question upon the same grounds that they objected to the first, that the first question suggests to the witness the answer, being withdrawn they suggest to the witness what his answer should be; that the last question is quite leading because he has put a question which was leading to suggest the answer and then puts a legal question afterwards.

A. Well, it was understood by us that Mr. Means' father was helping him out.

Q. 26. When you speak of the money being furnished by Mr. Sinton and Mr. Hanna, life-long friends of Mr. Means, does the Means you refer to have reference to Thomas W. or to John Means?

A. To the father of William Means and John Means, his old partner.

Q. 27. When securities were put in pledge by the director- and officers of the Metropolitan bank, including William Means, do you know whether or not Mr. Sanders gave receipts or other memoranda in evidence of that transaction?

717 A. He invariably gave receipts describing each particular stock or collateral that was put up.

Q. 28. State, Mr. Moffet, at whose instance you came here to testify—at whose instance or request?

A. At the request of Mr. John Means.

Q. 29. And you arrived in Cincinnati this morning?

A. This morning; yes, sir.

Q. 30. Had you before your arrival this morning seen Mr. John Means since the payment you have testified to?

A. Not since he walked out of the bank that evening. I have not seen him until this morning.

Re-examination by MAGER:

Q. 181. Mr. Moffet, as I understand, without reference as to whom the checks were payable, you said that they were so endorsed when in your hands as to enable you to make the collection and apply the proceeds to the benefit of the Metropolitan National bank?

A. Yes, sir; they were.

WEDNESDAY, *July 12th*, 1893.

Present: H. P. Whitaker, Esq, for the complainants; J. L. Anderson, Esq., for defendants. Also John Means.

S. W. DAKIN, being by me first duly cautioned and sworn, testified as follows:

Direct examination by Mr. ANDERSON:

Q. 1. State your name, age, residence and occupation.

A. S. W. Dakin; residence, Yellow Springs, Ohio; age, 40; attorney-at-law.

Q. 2. How long have you resided at Yellow Springs?

A. About fourteen years.

Q. 3. I will ask you if you were present at the trial or hearing, rather, of the case No. 8254 in the Greene county, Ohio, common pleas court, Gertrude E. Means and others *vs.* William Means, which was tried on or about the 22nd day of August, 1891.

A. Yes, sir.

Q. 4. Can you state the substance of the evidence upon which the decree in that case was based? You can refresh your memory by looking at that. (Handing paper to witness.)

A. My answer to the question is this: I was present at the hearing of the case and took the testimony myself and took it pretty fully. I transcribed that testimony on the typewriter and
718 sent a copy of it to Mr. Evan F. Williams at Ironton, Ohio, and I think I sent a copy of it to William Means—I am not certain about that—and the original notes that I took in that case were destroyed by fire in my office in November, '91, I think, and I have the notes here that I took from Judge Smith's notes of the testimony, who was the judge that heard the case.

Q. 5. Refreshing your recollection as best you can by examining those notes, and from your memory, can you state the substance of the testimony?

A. These notes here contain the substance of the testimony taken in that case.

Q. 6. State what the substance was?

A. Do you want me to read this?

Q. 7. Yes. Just read it.

A. Margaret E. Means and others, plaintiff-, against William Means, defendant. Court of common pleas. Testimony in the above case was taken from the notes of Judge H. L. Smith, trial judge. Testimony of Mr. Glidden:

I am attorney for plaintiff. Knew father of William Means all my life intimately and well. Some months before his death he was absolutely blind and was an imbecile. He died about June, 1890. His will provided for an equal distribution of property, and no account was to be taken of advancements thereof made or thereafter. Inventory of estate footed up about $800,000 of personalty and $25,000 in realty. Saw defendant William Means at Ashland. He was then contemplating separating and going with his family. Met defendant and his attorney in Xenia, Ohio, afterwards. He was threatened with suits by stockholders of banks for maladministration and as creditors could assert no claim against it, it was thought advisable to settle it on his wife and children if that would be satisfactory. No writing made. Little went to Yellow Springs but did not perfect arrangement. Afterwards arranged with Judge Whitaker and Williams, of Ironton, to go to Yellow Springs. They notified me that everything was settled. I was to get Mr. Sinton, of Cincinnati, to have John Means, of Ashland, meet Williams at house of Sinton. John Means managed estate of father. Some talk about Williams or me preparing trust deed. William Means was under indictment and desired assistance of his family procuring a *nolle* and did sign papers, &c. And afterwards the father died. Williams came to see me and I prepared a paper at his suggestion showing it was executed before his father's death. But I telegraphed
719 Judge W. on his way to get papers signed as of proper date and showing that it had been agreed upon before. For some reason the papers were not signed. Afterwards signed a trust deed and also an agreement for maintenance of defendant to be fixed and children to treat him kindly, and Judge W. wanted the paper signed at the suggestion of Williams — be in blank. Wanted deed drawn over and dated back. Mrs. Means instituted no proceedings for alimony. Allowed some property in Ironton to slip away in Ironton worth eight or ten thousand dollars which could have been reached. Means knew about contract being made and that alimony proceedings were about to be commenced. When matter first talked of Means said it was not necessary to put matters in writing and that Williams was not his attorney though he was his attorney.

Now here is the testimony of Mr. Whitaker or notes of it: Remember conversation at Little's office in Xenia about as Glidden. Knew Means about twenty years. (I do not know what Means he had reference to. Mr. Whitaker: William Means.) He was a wealthy man and supported his family well. I went to Ashland and received telegram referred to by Glidden. This was just at death of Means' father. I showed him paper at Cincinnati. Said he wanted to consider the matter although he did not object. The deed recited that

a contract had been made. He did not dispute it. The property was to be conveyed to the children for benefit of family and himself. Mrs. Means was to abandon alimony suit and Williams as trustee was not considered. Principal reason why deed was not executed was that Williams was named as trustee and also children only left the remainder.

John Little's testimony confirms statement of Glidden as to what occurred at Xenia. Went to Yellow Springs, but nothing took place.

That is the testimony as I remember.

Q. 8. Now, as a matter of independent recollection, having examined these notes of Judge Smith, can you state, or not, whether these notes that you have read from were the substance of what was testified to at that time?

A. That is just as I remember it. Of course I want it to go into the record of my testimony that that is not a very comprehensive review of the testimony, because Judge Smith did not take it very fully.

720 Q. 9. I will ask you what consideration, if any, upon that hearing was shown for the pretended agreement that they were setting up?

A. As I remember there was no money consideration at all.

Q. 10. What was the consideration?

A. As I remember, the consideration was the settlement of family differences between Mr. William Means and his family, and that he was to have her assistance here in getting rid of these indictments in the United States court. I think that that was one of the considerations, and another was that she was to abandon any proceedings in alimony that she contemplated. Those were the main considerations as I remember.

Q. 11. Was anything specified in that hearing as to what property it was that was allowed to slip away?

A. I don't remember. There was some property down there at Ironton, as stated in the notes, that Mr. Means probably had probably on that amount that could be reached for alimony if Mrs. Means had commenced suit. That was the impression I gathered from testimony of Mr. Glidden and Mr. Whitaker.

Q. 12. Do you know whether that was real or personal property?

A. I don't know. My impression was, though, that it was real estate.

Q. 13. Here is the sentence: "He was then contemplating separating and going with his family." Can you enlarge upon that statement any?

A. My recollection is that he was going with his family at Ashland and separating from home.

Q. 14. From his family at Yellow Springs?

A. That is my impression; yes, sir. I think that is the correct view of it.

Q. 15. It says here that William Means was then under indictment, and desired assistance of his family in procuring *nolle*. Can you state more fully what was shown to be the act or conduct of his

family or his wife with reference to those indictments? State whether or not she was giving her assistance up to that time in his behalf.

A. I don't know, only from hearsay, whether she was or not.

Q. 16. What was said at that hearing, if anything?

A. Just what is stated there in those notes, and that is one of the considerations, as stated, for the execution of this trust deed.

Q. 17. It says: "Did sign papers, etc." Can you state more fully what that refers to?

721 A. No; I don't know what papers that has reference to. I am perfectly well satisfied, though, it don't refer to the deed or any contract to execute the deed.

Q. 18. It says: "Williams came to see me. I prepared paper at his suggestion showing it was executed before his father's death." What paper does that refer to?

A. I could not state that, without it was the trust deed or contract to execute the trust deed. Now, I am satisfied, because I remember there was no written contract introduced there at all, signed by William Means. That is my recollection about it.

Q. 19. Here is a statement: "When Judge W. wanted papers sent at the suggestion of Williams to be in blank, and wanted deed drawn over to date back." Does that mean drawn over the blank signature?

A. I suppose so. I could not tell you.

Q. 20. Have you any recollection about the matter independent of what you seen here?

A. My recollection is that that testimony is correct as to that part of it.

Q. 21. Have you any letter with you written by Evan F. Williams? If so, of what date?

A. I have a letter from Evan F. Williams, dated June 30, 1891.

Q. 22. Does he state in that letter anything concerning the merits of the case that we have been speaking of here?

A. Yes, sir.

Q. 23. What does he state?

A. Shall I read it?

Q. 24. Read it as a part of your deposition; read the whole letter.

A. It says:

"S. W. Dakin, Yellow Springs, Ohio.

MY DEAR SIR: Your letter received. In reply will say that if we ever come to the merits of this case, we can show, admitting all they claim to be true, that it was only an unexecuted gift, which cannot be enforced in law, but we are not authorized by Mr. Means to appear in his behalf, and can do nothing until we receive instructions from him to oppose the plaintiffs. In the meanwhile we had better leave opposing counsel severely alone, as they are fishing to find out what we intend to do, and act accordingly. We do not wish them to know that we are watching their move-

722 ments or that we are taking any interest in the case or that

counsel are employed. Will you kindly watch all their movements and keep me posted.

Sincerely yours, EVAN F. WILLIAMS."

Q. 25. Was there any other evidence introduced upon the hearing of that case except the evidence of the three attorneys for the complainants in that case, Mr. Glidden, Mr. Whitaker, and Mr. Little?

A. That is my recollection. My recollection is that those were the only witnesses that were introduced. Mrs. Means might have testified, but I did not find any other testimony in Judge Smith's notes.

Q. 26. Have you any recollection that she testified?

A. Well, I could not say for certain. My impression is, though, that she did not. I think the decree was taken on the testimony of Mr. Glidden, Mr. Whitaker, and Mr. Little. That is my impression now.

Q. 27. Was the decree entered up at once after the evidence was heard?

A. It was.

Q. 28. Had the decree been declared before the hearing or not? Had the entry been prepared by any of the counsel there, or was brought there?

A. My impression is the decree was handed up to the court as soon as this was decided. That is my recollection.

Q. 29. Do you know whether or not Judge Smith read over that entry before it was put on the record?

A. I cannot say whether he did or not. He was a very careful judge. He hardly ever signed anything without reading it, but my recollection is that he did not read it over at that time. I would not say that he did not read it, because he is not in the habit of signing decrees or any other paper without first reading them. My recollection is that the decree was handed up to him.

Q. 30. And signed without him reading it?

A. I can't say that.

Q. 31. Are you acquainted with the property at Yellow Springs which is the residence of William Means?

A. Yes, sir.

Q. 32. Where is it situated?

A. Situated right in the heart of town.

Q. 33. How much of it is there?

A. I think there is 20 acres.

Q. 34. Desirable property or not?

A. It is very desirable property; yes, sir.

Q. 35. At the time this decree was taken—I am not asking
723 as to anything but at that time—we will say in 1890 or 1891, what was the reasonable value of that property?

A. In 1891?

Q. 36. '90 or '91—along in there?

A. Well, I should think it would be worth twenty thousand dollars at least.

Q. 37. In whose name does that property stand?
A. I never examined the records to see, but I think it is in the name of Mrs. Means.
Q. 38. Do you know with whose funds it was paid for?
A. Nothing, only what Mr. Means told me.
Q. 39. What did he tell you?
A. He told me that he paid for it.
Q. 40. Do you know whether she had other property or not?
A. No, sir. I want to add there that Mr. Means told me that he paid for everything that Mrs. Means possessed. I know he paid for rebuilding that house—furnished the money for the repairing of it. He told me all the property was in the house.

The testimony of the witness S. W. Dakin is objected to as irrelevant and incompetent because by it respondents seek to impeach the character of the Greene county common pleas court and because respondents in this action have not pleaded sufficiently to warrant this testimony; besides the fact that they are not and cannot be heard to question this decree as it would make no difference to them in the distribution of this estate whether there was or was not such a decree. As to the testimony of value of property, it is objected and excepted to as irrelevant, because there are no pleadings warranting any such testimony, and no such issue in the case.

Cross-examination by Mr. WHITAKER:

X Q. 41. The notes that you have been testifying from are not the notes you took down at the hearing of this case?
A. No, sir.
X Q. 42. Those notes were destroyed?
A. The original notes I took at the trial were destroyed by fire; yes, sir.
X Q. 43. When did you get these notes which you have testified from?
A. A few days ago.
X Q. 44. Who did you get them from?
A. From Judge Smith.
X Q. 45. At whose instance?
A. My instance.
724 X Q. 46. Who asked you to go to Judge Smith and get these notes?
A. Who asked me to go?
X Q. 47. Yes.
A. Why, I just went on my own accord.
X Q. 48. Were you notified by anybody to go and get them and come here and testify, and if so, by whom?
A. I was retained to look up the testimony.
X Q. 49. Who were you retained by?
A. Mr. Hager and Mr. Anderson.
X Q. 50. Who do Mr. Hager and Mr. Anderson represent in this case?

A. I don't know without they represent Mr. John Means and the administrators.

X Q. 51. Did they notify you by letter or did they come up in person to see you?

A. They came over in person.

X Q. 52. Both of them?

A. Yes, sir.

X Q. 53. Both Mr. Anderson and Mr. Hager?

A. Yes, sir.

X Q. 54. When did they come?

A. I don't remember; probably ten or fifteen days ago.

X Q. 55. It is not your intention, by your testimony in this case, Mr. Dakin, to impeach the veracity of Judge Smith?

A. Veracity of Judge Smith?

X Q. 56. Yes, sir.

A. No, sir.

X Q. 57. You did not mean to say, when counsel upon the other side ask you if the decree was handed up and signed before he read it, to case any——

A. I did not say it was handed up and signed before he read it. I said the decree was handed up immediately; that is, that day.

X Q. 58. You do not say that it was signed that day without reading?

A. I may be mistaken as to whom the decree was handed up but I did not say it was signed before reading.

X Q. 59. I will ask you, Mr. Dakin, from your knowledge of Judge Smith if he is not a man above reproach in every particular, as a judge and as a gentleman and as a lawyer?

A. Yes, sir.

X Q. 60. I will ask you to state here, now, in your deposition whether or not he is a most careful judge.

725 A. That is my experience with him as a practitioner in his court.

X Q. 61. That is his reputation generally, isn't it?

A. Yes, sir; he is a very careful judge.

X Q. 62. It is not customary with him to render decrees in cases where there are questions like there are in this case, without examining the questions and the testimony given before him, is it, and rendering decrees?

A. Well, no. It is not in my case. In cases where there is no defense he is not as particular in making examinations as he is where there is a contest. There was no defense in this case.

X Q. 63. You don't mean to say that Judge Smith would make a decision in a case without examining it, because there was no defense?

A. No, sir.

X Q. 64. You mean that in cases where there is no defense, Judge Smith is a worthy, careful, considerate judge?

A. Yes, sir.

X Q. 65. When did you first hear John Means or his counsel in regard to this matter?

A. When Mr. Hager and Mr. Anderson came up there.

X Q. 66. That is the first time?

A. Yes, sir.

X Q. 67. What was your object, Mr. Dakin, if you were present at the hearing of this case, in going to Judge Smith and getting his notes?

A. It was to get it correct.

X Q. 68. You could not state the correct status of the testimony without getting his notes?

A. Not without being refreshed.

X Q. 69. You can only state upon oath that which is contained in the notes, can you?

A. That, as I remember now, from looking over the notes, was the substance of the testimony in the case.

X Q. 70. Well, you are here then to testify in this matter, as I understand it, at the instance of Mr. Hager and Mr. Anderson, the attorneys of Mr. John Means and the administrators?

A. I presume so.

X Q. 71. You are paid by them for coming?

A. I was retained, as I said before, and now state upon the record, I was retained to look up the testimony.

X Q. 72. And came here to testify?

A. No, sir. I was not retained to come here and testify.

726 X Q. 73. Was not that a part of your answer?

A. No, sir. I did not know that I was to be a witness until I came down here and I did not know whether they wanted me to be put upon the stand until I came down here yesterday.

X Q. 74. You have spoken of the value of Mrs. Means' property up there, which we do not care anything about as it is not a relevant matter. It is unproductive property, isn't it?

A. Well, yes. It does not produce anything. It is only what you would consider as a nice country residence. I do not presume Mrs. Means gets any income from it.

X Q. 75. She cannot derive any revenue from it, can she?

A. I think not.

Re-examination by Mr. ANDERSON:

Q. 76. What is the population of Yellow Springs?

A. I think about 1,500.

Q. 77. Where is it located with reference to the spring known as Yellow spring? There are, I understand, springs by that name up there?

A. Yes, sir.

Q. 78. Where is this property with reference to that?

A. I presume a quarter of a mile from the springs and maybe a little more.

Q. 79. State whether or not that is a health resort.

A. It has been.

Adjourned to Thursday, July 13th, 1893.

JOHN F. HAGER, called for defendants, being duly sworn, testified as follows:

Direct examination by Mr. ANDERSON:

Q. 1. State your name, age, residence and occupation.

Counsel for complainants object to the testimony of John F. Hager because he is attorney in the case; that he was attorney at the time the transactions were going on out of which arose the several controversies in this case; that while he was not the attorney of record of William Means, he was cognizant of the alleged writings which have been testified to in this case in which William Means, Evan F. Williams and others participated. Counsel for complainants claim that any act or writing that was entered into in the
727 matters detailed herein by other witnesses was a privileged communication about which it seems improper that the attorney of the respondents should testify.

A. John F. Hager; age 40; residence, Ashland, Ky.; lawyer, and one of the attorneys for respondents in this action. I acted as one of the attorneys of Thomas M. Adams upon the appointment of Mr. Adams as committee of Thomas W. Means and was retained by the administrators at the time of their appointment and have represented them as attorney ever since.

Q. 2. State whether John Means consulted you concerning any acts of his in connection with the Metropolitan Bank matters and his relation to William Means; if so, when and about what?

A. In the latter part of September, 1888, Col. L. T. Moore, an attorney of Catlettsburgh, Ky., and myself, were called to meet John Means and did meet him in his office at Ashland to consider and advise with him upon certain matters growing out of the difficulties his brother William Means was then in. Mr. Means at that meeting produced a letter from his brother William dated in July and referring to the condition of the Labrot Trust in his hands and asking financial aid and assistance. We considered the provision of the fifth clause of the will of Thomas W. Means and in view of the provision there as to the form in which a transaction should be had whereby William Means could obtain the money necessary to discharge that trust and generally, the form in which the transaction should be placed to make the estate secure against any payments of money John Means might make for the benefit of William Means. The result of the conference was to advise John Means, and we did advise him, that in all subsequent dealings with William Means as agent and attorney-in-fact of Thomas W. Means, John Means should require the form of note and agreement attached which I now hold in my hand and is in my handwriting. It is as follows:

ASHLAND, KY., —— —, 1888.

One day after date I promise to pay to the order of Thomas W. Means the sum of — dollars, value received, with interest from date.

It is agreed as part of the transaction by which I have procured

a loan of — dollars upon the foregoing note that the amount thereof and all interest shall be paid from my interest as devisee or distributee of the estate of Thomas W. Means.

We advised Mr. John Means to use this form of note with
728 the writing attached, that it might clearly and beyond question under any construction of the fifth clause of the will, appear that the money so furnished his brother should be a loan and in no sense an advancement under the terms of that will. I will state I cannot give the exact date, but it was somewhere between the 22nd and 25th of September. I do remember that on the day of this meeting, Mr. John Means gave me a check for $50 on account of legal services and gave Col. Moore the same, the checks in each instance being the checks of Thomas W. Means per John Means, attorney-in-fact.

Q. 3. State whether you were present at the probate of the will of Thomas W. Means, deceased.

A. I was.

Q. 4. State whether there was any offering on the part of William Means to be qualified as executor under the will.

A. John Means, William Means and Eugene B. Willard are named as executors under the will. John Means was then in the South in Alabama, I believe. I prepared a written declination in July of '90, forwarded to John Means, addressed to the judge of the county court, declining to qualify. I heard no offer or intimation of a desire on the part of William Means to qualify as executor. My recollection is that John Means, Margaret Means and Mrs. Adams preferred that Thomas M. Adams and E. C. Means should qualify and act as administrators with the will annexed. I had no reason to anticipate an offer on the part of William Means to qualify; first, for the reason that he was not then a resident of Kentucky. Eugene B. Willard was not a resident of Kentucky, and *and* as the bond required was very large, I could not see, without the co-operation of the family, that any one could have qualified to execute the bond.

Objected to for the reason that the answer of the witness in regard to William Means and Eugene B. Willard being non-residents of the State of Kentucky is simply a legal conclusion on his part and not testimony in this case.

As matter of fact, I know that Eugene B. Willard then resided, and had for years resided, at Hanging Rock in Lawrence county, Ohio. I never knew of William Means being a resident of Kentucky.

Q. 6. I will ask if you were present at any meeting on or about October 4th, when William Means and others were present, and if so, state the fact and who were present and what took place and how the meeting came about.

A. Some time during the afternoon of Saturday, Octo-
729 ber 4th, 1890, I met with William Means, Evan F. Williams and Thomas W. Adams. Whether the three were together

and I joined them, or whether I had previously been with Williams and William Means, I do not recollect. It was stated by some one of the three that it was desired to accomplish a settlement between William Means and the estate of his father. We proceeded to the office of the Ashland Improvement Company of which E. C. Means was then secretary, and there followed a general statement and discussion of the purposes of that meeting. I stated then, or soon before, that the first matter to be considered was the matter of the revocation contained in the paper prepared by Isaac M. Jordan, dated July 28th, 1890, being a revocation of the order of William Means dated June 16th, 1890. E. C. Means produced the paper of July 28th, 1890, upon the margin of which I wrote the revocation which appears in evidence in this case and which was then and there signed by William Means and delivered to E. C. Means.

Q. 7. What, if anything, was said in that connection with reference to the object of that revocation—the purpose?

A. The object of the revocation was to effect a settlement between William Means and the administrators of the estate of Thomas W. Means.

Q. 8. Which was a revocation of what?

A. It was a revocation of a revocation contained in the paper of July 28th, 1890. It was stated at the time that the object was to effect a complete settlement and that at the time the amount was not known, the papers belonging to the estate being in the Ashland National bank; but that the whole matter should be concluded as nearly as might be that evening—that is, the evening of October 4th.

Q. 9. Before you leave that subject. With reference to this order of June 16th, what was the purpose of that revocation that you executed that day, if anything?

A. The order of June 16th, 1890, was a direction to charge against the distributive share of William Means the notes and indebtedness due from him to the estate of his father. This was written and delivered within a few days after the death of Thomas W. Means. The revocation of July 28th had reference to that paper and left the question, and intended to leave the question, at large. And the revocation of October 4th was to leave the order of June 16th operative.

Counsel for complainant- object to the answering of witness upon the ground that the answer in part, if not wholly, decides a legal conclusion.

730 That meeting broke up and Evan Williams and William Means left, declaring their purpose to go to Ironton and return during the evening or night of October 4th. Mr. Adams, Mr. E. C. Means and myself remained at the office of the improvement company until after the arrival of the Scioto Valley train due there at about 10 o'clock, and until near midnight Williams and William Means failed to return. On Sunday following I left Ashland for Frankfort on the afternoon train and was not there on October 6th. I, as attorney, advised E. C. Means and Adams to make up interest

calculations and to be ready when William Means should return, to give him the amount of the indebtedness, take his receipt as payment on his distributive share, to make entries upon their books in accordance, and delivered the evidences of indebtedness that they held against him, and further advised them that in my absence they might have Mr. Anderson come up from Ironton to be present.

With further reference to the meeting of October 4th, Evan Williams proposed that they would also settle the indebtedness due from William Means to John Means, Margaret Means and Mrs. Adams. This was at the conference, Mr. William Means being present. Discussion followed as to how that matter might be arranged. It was in the contemplation of Williams and William Means, at least, that the suit might be instituted by the Metropolitan National bank, its receiver or agent. I said that an order in favor of the parties might be, and probably would be, attacked as a preference by William Means to his brothers and sisters as creditors, but if not attacked within six months it would be good and would stand, but that as neither John Means, Margaret Means nor Mrs. Adams would bring an attachment on their debt, that their position would be no worse to take the order, and might be better, in the event it was not attached by creditors within six months. Mr. Adams said at the time that he regarded his first duty to be to the estate and that he did not want the settlement for the estate embarrassed or at all connected with the transaction of orders in favor of John Means, Margaret A. Means and Mrs. Adams. I wrote the receipt known as the $26,000.00 receipt. The amounts due John Means, Mrs. Adams and Margaret A. Means were not definitely ascertained at the meeting of Oct. 4th.

Q. 10. State if you were present at the meeting of October 16, when the $136,000.00 receipt, with perhaps other papers, were signed; if so, state the fact, and what took place?

731 A. I was in Ashland October 16th and there met Mr. Evan Williams, Charles W. Baker and William Means. I understood their appearance there at that date to be for the purpose of consummating the settlement agreed upon in its general terms on October 4th. I had a talk with Baker and with Williams, the substance being, so far as Baker was concerned, that he was there for the purpose of advising William Means to make a just settlement with the estate of his father, with his brothers and sisters; that "blood was thicker than water" was the expression he used; that his family had manfully stood by him in his trouble and it was a manifest duty on his part to make a complete settlement and do justice by the estate and his brothers and sisters. About dark I went out to the Thomas Means mansion and there met Mr. Baker, Mr. Williams, Thomas M. Adams and William Means, Mrs. Adams being present about the house. Mr. William Means was at a table in the back room engaged in writing the receipt known in this record as the $136,000 receipt. During this time I was engaged in conversation principally with Mr. Baker. At the conclusion of the signature and delivery of the receipts, I left the house and returned home. I do not now recall whether I saw Cook Means in the house

or not, but I do recall that I met him and talked with him at the entrance to the house, either in going in or returning from the meeting. I witnessed the signature to the $136,000 receipt as did also A. E. Lampton who came in some time during the evening.

Q. 11. Have you stated anything yet about the execution of these orders to John Means, Margaret Means and Mrs. Adams aggregating $26,000?

Q. 11 repeated.

A. October 16th, 1890, the amounts were ascertained and agreed to be, to John Means $8,478.33, Margaret A. Means $16,112.46, Mary A. Adams, $1,650, and on that day I wrote receipt identified in deposition of T. M. Adams May 19, 1893. Mr. Adams objecting to closing the matter by receipt on that day, the date was changed to October 18th, but my recollection is that it was signed October 16th. With reference to this receipt, it was agreed that the amount should be charged to William Means and the several amounts due his brothers and sisters should be paid to them on condition that they furnished a refunding bond, it not being clear to the minds of the executors at the time that this amount, in addition to the $136,000 might not exceed the distributive share of William Means in the estate,
732 and the executors were not to assume any liability to these parties for the payments until a refunding bond had been executed by them. I see the papers have already been offered in evidence, here in my hand. It was understood at the time that I was to prepare a refunding bond and that it should be executed by John Means, Margaret A. Means and Mary A. Adams.

On the 18th of October, as I now recollect, I prepared such bond—Exhibit 20, T. M. Adams' deposition—and also to accompany same and be signed as part of the transaction, Exhibit 21, being an agreement to be signed by John Means, Margaret A. Means and Mary A. Adams, that they should refund, if called upon, as between themselves, on the basis the sums due them bore to the sum of $26,240.79.

These papers I forwarded to Margaret A. Means, who was then in Philadelphia. They were subsequently returned—whether to me or to Mr. E. C. Means I do not recall—but with the understanding that Miss Margaret Means was not very favorable to the execution of the plan. The bond nor the paper accompanying it was ever signed by Mrs. Adams.

Subsequently I saw the three orders of October 31, 1890, which were prepared, or forwarded, by C. W. Baker. These were assignments in favor of the respective parties for the amounts covered in gross by the receipt made October 16th, dated October 18th, 1890.

With reference to the order of June 16th, 1890, either Mr. Adams or Mr. E. C. Means came to me in the office of the improvement company at Ashland on that day and said that William Means was ready and disposed to settle the matter of his indebtedness to the estate of his father or to give written assignment or authority to that effect. Col. L. T. Moore was in Ashland at the time and I wrote and delivered to Mr. Adams or Mr. Means a receipt, in form of which I

recognize the writing of June 16th, 1890, signed by William Means as a copy. William Means was not present.

Any conversation that took place between witness and E. C. Means and Thomas M. Adams in regard to receipt of June 16th, William Means not being present, is objected to as irrelevant and as hearsay.

At that time no personal representative of Thomas W. Means had been appointed.

July 29th, I wrote the endorsement on the back of the order, which was signed by E. C. Means and T. M. Adams as administrators and attested their signatures as such. W. B. Seaton also signed as attesting witness.

733 Q. 12. Explain why that is dated July 29th instead of July 28th?

A. Well, their appointment was by order of court made July 28th. Their bond was not completed and they were not fully qualified until July 29th, when the endorsement was made.

Q. 13. When did you first see the paper now handed you?

A. This is the paper signed by Jordan & Jordan and Evan F. Williams. My best recollection is that I saw a copy of that paper July 28th, 1890, in the court-house at Catlettsburg before leaving the court on the day they probated the will of Thomas W. Means. The copy was handed me by Thomas M. Adams or E. C. Means.

Q. 14. What is the paper that you now hold in your hand?

A. It is the letter on the letter-head of Evan F. Williams, lawyer, corner of Second and Center streets, Ironton, Ohio, in three sheets, dated October 18th, 1890.

Q. 15. When did you first see that letter, and where?

A. It came to me by mail to my address, Ashland, Ky., on or soon after the date it bears. I gave the letter to E. C. Means about the time of receiving it and recognize and remember the letter I hold as the one so received by me.

Q. 16. I will ask you to state what work is referred to in the last sentence of that letter?

The sentence referred to in the question is: "If John Means, Mrs. Adams and Miss Means have not signed receipts and the amounts properly credited as payments, don't you think this should be attended to without delay? Otherwise all our work may come to naught."

The question is objected to because a single word is singled out in the question to be considered by witness, which, when construed, must be nothing more than his opinion as to the construction of some one else and is therefore irrelevant and incompetent, being a mere opinion of witness.

A. To answer the question in the sense in which I understand the question to refer, it is necessary to go back to the matter of the settlement. At the time of settling and taking the receipt and making the payment of $136,000, as I have said before, there was a discussion as to the probability of an attachment suit being filed,

growing out of the affairs of the Metropolitan bank. It was supposed that beyond the sum of $136,000 there would be, or might be, a sum which might be reached by such attachment. The
734 arrangement as to the $26,000 to be paid to the brother and sisters being incomplete before the execution of the refunding bond, it was supposed that that sum, until the bond was completed, might be reached by the attachment and that it was necessary to complete the transaction by signing the receipt and crediting the amounts to the brother and sisters and charging them as payments on account of the distributive share of William Means; otherwise there might be difficulty in holding that sum as against the attachment.

Q. 17. State if, in any of the interviews on the 4th of October, the 16th of October, or any other time, with Mr. Baker, Mr. William Means, Evan F. Williams, Mr. Glidden, Mr. Whitaker, or any other person representing Mr. William Means, or his wife, or his children, anything was said to you concerning any interest that they claimed by virtue of a trust deed or otherwise, in the share of William Means in the estate of Thomas W. Means; if so, state what it was, prior to the time, or at the time, of the signing of the $136,000 receipt.

A. In January of 1890 I saw Mr. Glidden in Ashland at my office. Mrs. William Means and two of her daughters were there at the time. One of the daughters, Patti, had shortly before that been at Mr. Thomas W. Means' residence. There was some little family disturbance, the details of which are not important to be mentioned in this connection, which called Mr. Glidden to Ashland. Col. Moore, of Catlettsburg, and myself met Mr. Glidden at my office. Mr. Glidden spoke at some length, deprecating the existence of ill-feeling on the part of the various members of the family, looking to some sort of provision or support of the family of William Means. He mentioned the fact that William Means was largely indebted; the further fact that his father was then in advanced age and probably imbecile condition, and that by anticipation some provision should be made for them. He mentioned the further fact that Mrs. Means had, or had reason to believe she had, a cause of action against Mr. John Means and Miss Margaret Means growing out of her belief that they had alienated the affections of her husband and that if the matter were left to drift without adjustment that it might be made a matter of serious and unpleasant family difficulty and disagreement. He asked what, in our judgment, could be done, and especially asked if he might or could see John Means about the matter. John Means was not then in Ashland. Col. Moore did rather more of the talking than I, in saying that there was then no one having, or pretending to have,
735 authority to act for the estate of Thomas W. Means and that if there was anything in the alleged cause of action for alienation of affections, that he knew nothing of it and had never heard of such, and that a threat of that sort could not be considered by himself or by me as representing anybody. There was further statement made by him that it was new law to him, Moore, that a married woman, in the lifetime of her husband, could

assume to deal in any responsible way with the property interests and effects of her husband. Mr. Glidden disclaimed any authority to act for William Means in the matter and said that his connection in the matter was as the representative of Mrs. Means. There was some further talk about the amount of money William Means owed the estate or owed others. A suggestion was made by Mr. Glidden that his expectancy could not be reached by his creditors, and I am not sure but what he went so far as to say that it could not be looked to by the estate. My belief is that Mr. Glidden said that the expectancy might be the subject of an equitable settlement upon the part of William Means upon his wife and members of his family and in that way could be placed on such basis as would afford protection of their interest. He did not say at that time in my hearing or presence that such settlement had been made or agreed.

I remember to have seen Mr. Whitaker in Ashland, I think, about March or the latter part of February, 1890. I understood his appearance there, from his statement, to be in the interests of Mrs. Means—possibly her children. He told me that he had seen Cook Means, and that Judge Ireland's commendation of Cook had been fully met when he had seen him and held the interview with him; that he had not been able to see John Means and regretted his inability to do so. I do not at present recall any further conversation I held with Mr. Whitaker.

I did not hear from Mr. Whitaker, William Means, Evan F. Williams or other person, October 4th, October 16th, 1890, or at any other time previous to October 16th, 1890, any claim or representation of the existence of a trust in the interest of William Means in his father's estate in favor of his wife or children. The whole matter of the interviews of October 4th and 16th, with respect to apprehended litigation had reference to an attachment proceeding expected to be instituted by the Metropolitan National bank or other creditor of William Means with the undefined and undefinable apprehension that Mrs. William Means might soon institute a suit for alienation of affection or for alimony. I did not see Mr. Glidden after January, 1890, or Mr. Whitaker in Ashland after March,
736 1890, except about the time of the funeral of Thomas W. Means, before October 16th, 1890.

I was not at the meeting in the Hotel Aldine at Ashland, October 16th, 1890, as to which Mr. E. C. Means testifies. In the month of September, 1891, I learned through some newspaper extracts furnished by E. C. Means, that some sort of suit had been instituted in Greene county against William Means affecting his interest in his father's estate. The newspaper account was meagre but enough, in my mind, to justify investigation as to what had been or was being done there. E. C. Means asked me to go to Xenia in the interest, and as the representative of John and Margaret Means. About September 14th I went to Xenia, examined the record and proceedings in the case of Gertrude E. Means and others *vs.* William Means, obtained a transcript of the entire record, including the decree, carried the same with me, first to Frankfort, Ky., and the matter was made the subject of consultation between Col. Moore

and me, Moore being in Frankfort in the matter of the constitutional convention, and soon after communicated the information obtained to E. C. Means and T. M. Adams. It was through inspection of this record at the time stated that I first had notice and knowledge of the existence of the trust in the interest of William Means in the estate of his father.

Q. 18. At the time Mr. Glidden talked with you and Col. Moore in January, 1890, and subsequently, when Mr. Whitaker talked to you, did they, or either of them, claim that they were representing William Means' wife and children in the interest they then had, or as to some method by which they were to get an interest in his share of his father's estate?

A. I believe I have answered, Mr. Anderson. I have answered all that I remember as having transpired between Mr. Glidden and myself and as between Mr. Whitaker and myself. I will add that I did not understand Mr. Glidden as representing an existing or subsisting interest in the estate of Thomas W. Means on the part of Mrs. Means or her children. I do not recall anything more than transpired between Mr. Whitaker and myself than the conversation that I have heretofore detailed.

Q. 19. This morning, you said, I believe, that in September, 1888, when John Means consulted you and Col. Moore, you gave him a form as to subsequent payments by Thomas W. Means for William Means. I will ask if you gave him any advice about payments that had already been made before that date; if so, state what.

737 Objected to as leading, and as the witness has already stated that the advice given by him and Col. Moore was at the time called for by Mr. Means as he called upon them as to what steps should be taken as to notes to be taken in future in regard to the Labrot trust.

A. My answer given this morning, referring to the subsequent transactions of John Means was unintentionally narrowing the effect of that interview. I remember that at the time, September 24th, there was something said about the items that had been charged to William Means in current account as contradistinguished from advancement account, and that we agreed in the advice that the transaction would be less clearly a matter of indebtedness in that form than secured or covered by a note, and I answered prospectively; I understood the matter of our interview as guiding future transactions; but remember as an independent fact that past transactions were mentioned in that interview.

I also ought to add in this connection that I said that John Means was in Alabama at the time of the probate of the will. He was in Alabama on the Fourth of July following, but was at Waukesha at that time.

I ought to make it clear, probably—I stated that checks were given, $50 each to Col. Moore and myself—by John Means, attorney-in-fact for Thomas W. Means. Mr. John Means stated that he wanted our advice and services on behalf of Thomas W. Means.

Boyd Circuit Court.

MARGARET A. MEANS, ETC., Plaintiffs,
vs.
WILLIAM MEANS, ETC., Defendants.

Answer, Counter-claim, and Cross-petition.

The defendant, Evan F. Williams, says: He is interested in the controversy herein, and has a right to and interest in the property and its proceeds sought to be sold, divided and apportioned herein. It is true that he has a lien on the property sought to be sold and divided in this action in virtue of a mortgage thereon made and executed to him by defendant, William Means. And it is true that one-fifth of the real and personal estate, including that set
738 out in the petition of said Thomas W. Means passed by his said will to said William Means, wherefore, etc. The defendants for further answer, counter-claim and cross-petition herein says: On the 18th day of October, 1890, said William Means signed, executed, acknowledged and delivered to this defendant a mortgage upon his one-fifth interest in said lots number- 1, 2, 3, 7, 8 and 9, and the buildings and improvements thereon, mentioned by plaintiff to secure the payment of a debt due from him to defendant of $3,000, with interest from —— due in one day thereafter. And in consideration of defendant's services as an attorney-at-law rendered to, and money loaned to said William Means of the value of $3,000 at his special instance, request and employment, said William Means promised and agreed to pay the defendant, Evan F. Williams, said sum of $3,000 with interest thereon, but has paid no part thereof. It is due.

Wherefore, defendant prays judgment for his said debt, interest and cost, and that the interest of Wm. Means in said real estate may be subjected to the payment of his debt, and for all proper relief.

R. C. BURNS, *Attorney.*

A copy.
Attest: BEN. U. STEELE, *C. B. C. C.*

Boyd Circuit Court.

MARGARET A. MEANS, ETC., Plaintiffs,
vs.
WILLIAM MEANS, ETC., Defendants.

Answer, Counter-claim, and Cross-petition.

The defendant, Charles W. Baker, says: He is interested in the controversy herein, and has a right to, and interest in the property and its proceeds sought to be sold, divided and apportioned herein. It is true that he has a lien on the property sought to be sold and divided in this action in virtue of a mortgage thereon made and executed to him by defendant William Means. And it is true that

one-fifth of the real and personal estate, including that set out in the petition of said Thomas W. Means passed by his said will to said William Means, wherefore, etc. The defendants for
739 further answer, counter-claim and cross-petition herein says: On the 18th day of October, 1890, said William Means signed, executed, acknowledged and delivered to this defendant a mortgage upon his one-fifth interest in said lots number 1, 2, 3, 7, 8 and 9, and the buildings and improvements thereon, mentioned by plaintiff to secure the payment of a debt due from him to defendant of $3,000, with interest from ——, due in one year thereafter. And in consideration of defendant's services as an attorney-at-law rendered to said William Means of the value of $3,000 at his special instance, request and employment, said William Means promised and agreed to pay the defendant, Charles W. Baker, said sum of $3,000 with interest thereon, but has paid no part thereof. It is due.

Wherefore, defendant prays judgment for his said debt, interest and cost, and that the interest of Wm. Means in said real estate may be subjected to the payment of his debts and for all proper relief.

R. C. BURNS, *Attorney.*

A copy.
Attest: BEN. U. STEELE, *C. B. C. C.*

Q. 29. In answer to question 979 in his deposition, Mr. Williams says: "They all knew there was trouble between William Means and his family at that time," referring to Mr. Hager, Mr. Cook Means and Mr. Adams, and he adds: "I cannot recall any particular conversation that I had with them at any time in which I spoke about it"—that is, a claim of the children of William Means against the share of William Means in his father's estate—"to them on the day that those two receipts were signed." I will ask you if, on that day when the $136,000 receipt, and the $26,000 receipt were signed, or at any time prior thereto, Mr. Williams, or any one in your presence when Mr. Williams was present, or any one at all at any time, ever referred to any trust or interest of the children of William Means in their father's share of Thomas W. Means' estate; if so, state what and when?

A. There was no mention of a trust in favor of the children of William Means in his interest in the estate of his father at the time referred to in the question.

Q. 30. In question 1270, I asked Mr. Williams as follows: "You have stated on cross-examination, in substance, if I remember correctly, that when the receipt for $136,000 was signed by William Means that it was not final as between William Means and
740 the administrators, but that there was to be an adjustment afterwards. Was there anything to that effect stated at the time; if so, by whom and what?" I will ask the same question of you.

A. I never heard at the time anything about an adjustment to be subsequently made. The amount of $136,000 had been cast up and

reported as the sum of William Means' indebtedness, and I heard no question that it was so.

X Q. 35. Do you recollect whether they were discussing the matter when you got there or not?

A. I think not. My recollection is that William Means was in the back parlor engaged in writing the receipt when or about the time I came in.

X Q. 37. Mr. Hager, do I understand you to state that you never at any time heard from any one that this $26,000 or any portion of it was to be paid to William Means?

A. I do not recall the number of the question, but only in the general sense indicated in the answer to a question which Mr. Anderson put this morning.

X Q. 38. I again ask you if at any time prior to the signing of those receipts, the $136,000 receipt and the $26,000 receipt, you ever heard from any one or gained any knowledge, from any source whatever, that any portion of the $26,000 was to be paid to William Means?

A. At the meeting of the 4th of October, it was supposed that there would be suits instituted and attachments levied upon the interest of William Means in the hands of the executors, and that after deducting the amounts of his indebtedness to the estate, there might be a balance which such an attachment would cover. It was stated that William Means owed his brother and sisters some considerable sum, but also stated that they would not file attachment suits to subject his interest. It was further stated that unless some provision could be made to protect the excess above $136,000 that it might be subjected, and when this arrangement was proposed, it was stated that the brother and sisters regarded the debt against William Means as lost or of no value, and that if the arrangement was made that they might realize upon what they regarded as a worthless claim; that they would be disposed to render him such further aid as his condition might require; but, as I said before, I never understood an arrangement being made to that effect in the sense of an obligation upon their part that a definite sum or any sum, except in a general way, would be paid to William Means.

741 X Q. 40. What inference did you draw from it; that it was to extend to the $26,000 or any part of it?

A. No, sir. I had no inference as to the extent but that it was stated by some one and was understood by all, that as they had helped him in the past, they would continue to do so, and with better grace, after provision had been made for their debts.

X Q. 41. Nothing said about William Means' wife and three children, was there, in those conversations—about how they were to exist and get along?

A. I do not recall, Judge, that there was.

X Q. 42. No mention made of any of them in those conversations at all?

A. Well, as I stated, the mention that was made of Mrs. William Means was that she was spoken of as having in contemplation a suit for alimony and probably an attachment be levied upon his

interest and also a suit against John and Margaret Means for alienation of affection of husband.

X Q. 43. Don't you consider, Mr. Hager, it rather strange that none of the defendants in this action should hear about those and not hear anything about a trust that had been mentioned long before any of these matters had been mentioned?

A. I only know that the matters that I have spoken of were matters spoken of by the parties at the time and that it was matter of some notoriety that Mrs. Means had in contemplation suits of the general nature spoken of. If the same notoriety had been given the fact of the trust deed, I would consider it remarkable that that fact had not also been mentioned.

X Q. 50. The $26,000 receipt, as it is designated, then, was executed with that end in view, was it not, on the 16th day of October, 1890, at the same time when the $136,000 receipt was executed?

A. The agreement looking to the execution of the two receipts was made October 4th, 1890, with the distinct understanding that as to the amount covered by the $26,000 receipt, that its effect was to give the brother and sisters of William Means a preference as creditors over other creditors of William Means and was unquestionably so understood at the time, and ever after.

T. H. B. JONES, being by me first duly sworn, testified as follows:

Direct examination by Mr. ANDERSON:

Q. 1. State your name, age, residence and occupation?

742 A. T. H. B. Jones; 37; Ironton, Ohio; at present clerk of the Sheridan hotel at Ironton, Ohio.

Q. 2. State whether you were acting in that capacity on or about May 18th, 1893?

A. I was.

Q. 3. State whether you are acquainted with William Means?

A. I met him then for the first time.

Q. 4. Where did you meet him?

A. At the Sheridan hotel at Ironton.

Q. 5. State whether he put up there at that time?

A. He did.

Q. 6. How long did he remain?

A. I believe, if my memory serves me right, he registered there on the 18th day of May and left on the 27th of May, 1893.

Q. 5. During the time that Mr. William Means was registered there between the 18th of May and the 27th of May, '93, state whether you saw Mr. H. P. Whitaker, the attorney in this case for complainants, at that hotel; if so, about what time?

A. I saw him there at that time.

Q. 6. Did he put up there?

A. Yes, sir.

Q. 7. What day, or night, as the case may be?

A. I think he registered on the 18th. (Refers to memorandum.) On the 18th day of May.

Q. 8. Any other day?

A. On the 19th.

Q. 9. Any other?

A. On the 25th. That is what the register shows.

Q. 10. Did you see Evan F. Williams there?

A. I think so.

Q. 11. What days did he register there?

A. I saw Mr. Williams there frequently. He was there on the 19th, 20th and 24th of May.

Q. 12. State whether he was registered there on those dates you have mentioned?

A. Yes, sir.

Q. 13. And whether he was there at times when he was not registered, with William Means?

A. Well, I would not be positive about that.

Q. 14. What is your best impression?

A. He was registered on those days I spoke of.

Q. 15. State whether or not you saw Mr. Whitaker and Mr. William Means there at the times you referred to, together?

A. Oh, yes, I think they were together some there.

743 CHARLES WOODROW, called for defendants, being by me first duly sworn, testified as follows:

Direct examination by Mr. ANDERSON:

Q. 1. State your name, age, residence and occupation.

A. Charles Woodrow; 4th and Broadway, Cincinnati, O.; age, 35; hotel clerk.

Q. 2. Where were you staying on or about the 30th of March, 1893?

A. Stag hotel, clerk.

Q. 3. Are you acquainted with William Means?

A. I have met him—yes, sir—at the hotel.

Q. 4. At what time did you meet him about?

A. I have met him on or about the thirtieth of March.

Q. 5. Was he a guest of the hotel, and, if so, for what period?

A. He was rooming there for about five or six days at that time, if I remember correctly.

Q. 6. With whom, if any person, did he come to the hotel?

A. I was not on watch when he came. He was there with Mr. Williams, I believe.

Q. 7. Evan F. Williams?

A. Evan F. Williams, yes, sir.

Q. 8. Of what place?

A. Ironton, Ohio.

Q. 9. Do you know whether he roomed with any one when he was there?

A. I think he and Mr. Williams occupied a room together.

Counsel for complainants object to the testimony of the witness,

because it is irrelevant and incompetent. They know of no law in this country that prevents a gentleman from being in such locality as he sees proper as long as he behaves himself.

Attendance fee, $1.50, claimed by witness and paid by defendants.
Adjourned to Thursday, August 3, 1893, at 10 o'clock, a. m.

JOHN MEANS, recalled for defendants.

Direct examination by Mr. ANDERSON:

744 Q. 1. Will you read the question 629 in your testimony for respondents, and your answer thereto, as it now appears in the record, and state whether it states the fact as you understood and now understand it to be, and, if not, modify it according to the facts?

The question and answer referred to are as follows:
X Q. 629. You took these securities to secure you against the money you were paying out for him, did you not?
A. They were in the hands of the bank, and I took them to secure me for a note to secure myself.

A. I think the answer to the next question, 630, shows and explains that I took the note to my father and not as answered in 629, which says seemingly a note in favor of myself.
Q. 2. What is the fact?
A. The fact, I think, is fully expressed in the last answer, that it was a note in favor of my father, and not, as that answer seems to imply, in favor of myself. The next answer, 630, makes that plain.
Q. 3. Your answer to question X Q. 713, in your deposition for defendants, makes you say, in substance, as I understand it, that all the securities that you received from William Means, after those received from the bank, were received as collateral to the $125,000 that you had paid to the bank. State what the fact is in reference to that matter.
A. I understand that question to refer to the securities handed to me by William Means himself, after the 15th of February, after the payment, and I considered and treated them as collateral. The other securities received from the Labrot Trust were not handed to me by William Means, and I did not consider that question and answer as referring to them.

Counsel for respondents offer in evidence a certified copy of deed of William Means to Evan F. Williams, dated 21st day of April, 1890; also certificate of same.

Q. 4. I will ask you, Mr. Means, to look at that deed and state what property is described in it?
A. This deed is for what appears on father's books as the Hamilton farm. It is the undivided one-fifth interest, and also certain lots, giving the numbers, which I have always understood were considered as a part of the home place or residence, and were conveyed to my mother by a deed from F. D. Norton and wife, and my impression is, from Mrs. Norton, wife of F. D.

Q. 5. During the year 1890, what property, if any, other than his interest in the real estate that is therein described and lots
745 121 and 111 that stood in your mother's name at her decease, did William Means have in Lawrence county?

A. I knew of no other property that he held.

Q. 6. What was the expense of his interest in the property in this deed described?

A. An undivided one-fifth.

Q. 7. What was the value of his interest in all of the property that has been referred to at any time during the year 1890, or since?

A. I believe the value is between three or four thousand dollars.

William Means to Evan F. Williams:

Know all men by these presents: that William Means of the county of Greene and State of Ohio, in consideration of the sum of six thousand six hundred and sixty $\frac{33}{100}$ dollars to her paid by Evan F. Williams the receipt whereof is hereby acknowledged does hereby grant, bargain, sell and convey to the said Evan F. Williams his heirs and assigns forever the following-described real estate situate in the county of Lawrence in the State of Ohio and in the township of Hamilton and bounded and described as follows, viz: All my right, title and interest which is about one undivided fifth of the Means farm adjoining Hanging Rock and conveyed to Sarah Means by F. D. Norton and wife commencing on the bank of the Ohio river at a point south 35° west from the southeast corner of lot No. 1121 of R. Hamilton'- addition to Hanging Rock, thence north 35° east along easterly line to lot- 112 and 113 to Second street, thence south 55° east 8 poles, thence north 35° east along easterly line of lots No. 120, 121 and 122 to north side of an alley north of lot No. 122, thence north 55° west along said alley to a point opposite the north corner of lot No. 106, thence north 32° east thirty chains and 30 links to a stone at the northwest corner of the southwest quarter of southwest quarter of section seven (sec. 7), township 1, range 18, thence east along line of Pine Grove Furnace land sixty chains to a stone at the northeast corner of the southwest quarter of the southwest quarter of section (7) seven, township one (1), range 18, thence south twenty (20) chains to Jonathan Lamberts' line, thence south with said Jonathan Lamberts' line ninety (90) poles to a sugar-tree corner of Jonathan Lamberts' north line of bottom land, thence
north 65° west forty poles to a sugar-tree and dogwood cor-
746 ner to a lot of half an acre deed- by William Carpenter to William Lamberts, thence with the line of said lot north 33° east ten poles to a stake, thence north (65) sixty-five degrees west 8 poles to a stake, thence north 65° west 8 poles to a stake, thence south 33° west 10 poles to a stake in Jonathan Lamberts' line; thence with Jonathan Lamberts' line north 65° west to northwest corner of Jonathan Lamberts' line north 65° west to northwest corner of Jonathan Lamberts' river-bottom land, thence west thirty feet to western side of strip of land thirty (30) feet wide extending from the Ohio river to foot of the hill along the westerly line of Jonathan Lamberts' line, thence a southwesterly course along the line

easterly of said strip of thirty (30) feet to the bank of the Ohio river, thence down the river with the meanders thereof to the place of beginning containing 300 acres more or less. Also town lots Nos. 112, 113, 106, 107, 116, 117, 122, 115, 118, 12, known and described as in the recorded plat of the village of Hanging Rock and said lots being situate in Hanging Rock, Lawrence county, State of Ohio, and for further description of the above-described premises reference is hereby made to the deed from F. D. Newton and wife to Sarah Means; the said 300-acre farm is on section line (1) township 1, range 18 of Hamilton township. Also the following-described premises in Upper township, Lawrence county, Ohio, part of southwest quarter of northeast quarter of section 18, range 18, township 1, being one acre of land on the south of the Ohio river. And also a strip of land 30 feet wide beginning on the north side of said acre at a line between Carpenter and Lambert and extending to middle of county and the remaining part of said strip of land for a better and complete description reference is hereby made to the deed of the sheriff of Lawrence county to Sarah Means dated December 29th, 1866, which description is made a part of the deed the same as if written herein and all the estate, title and interest of the said grantor William Means either in law or in equity, of, in and to the said premises, together with all the privileges and appurtenances to the same belonging, and all the rents, issue and profits thereof; to have and to hold the same to the only proper use of the said grantee, his heirs and assigns forever. And the said William Means for himself and his heirs, executors and administrators, does hereby covenant with said grantee, his heirs and assigns, that he is the true and lawful owner of the said premises and has full power to convey the same; that the title, so conveyed, is clear, free and unincumbered; and further, that he will warrant and defend the same against all claim, or claims, of all persons whomsoever.

747

In witness whereof, the said William Means hereby releases right and expectancy of dower in said premises, has hereunto set hand and seal, this 21st day of April in the year of our Lord one thousand eight hundred and ninety.

WILLIAM MEANS. [SEAL.]

Signed, sealed and acknowledged in the presence of us—

ELIZABETH HAMILTON.
J. W. HAMILTON.

THE STATE OF OHIO, }
County of Greene, } ss:

Be it remembered, that on the 21st day of April in the year of our Lord one thousand eight hundred and ninety, before me, the subscriber, a notary public in and for said county, personally came William Means, the grantor in the foregoing deed, and acknowledged the signing and sealing thereof to be his voluntary act and deed, for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto subscribed my name and affixed my notarial seal, on the day and year last aforesaid.

[SEAL.] J. W. HAMILTON,
Notary Public in and for Greene County, State of Ohio.

THE STATE OF OHIO, } ss:
Lawrence County, }

RECORDER'S OFFICE.

Received for record April 25th, 1.35 p. m., 1890. Recorded May 12th, 1890.

P. F. GILLETT, *Recorder,*
By C. A. GILLETT, *Deputy.*

STATE OF OHIO, } ss:
County of Lawrence, }

I, A. D. Bruce, recorder of Lawrence county, Ohio, do hereby certify that the foregoing is a true copy of the original as recorded in volume 49, pages 419, 420, and 421, of the record of deeds in the office of county recorder of the county and State aforesaid.

In testimony whereof, I have hereunto set my hand and affixed my official seal on this 15th day of July, 1893.

[SEAL.] A. D. BRUCE, *Recorder.*

748 Cross-examination by Mr. WHITAKER:

X Q. 8. Mr. Means, I understand that heretofore in your cross-examination in this cause you testified that you drew the $75,000 from McConville which had been deposited with him for certain purposes which the record discloses, and placed the same in the Ashland National bank to your credit and I understood you to say that out of that money you paid Margaret Means $45,000 in discharge of a $45,000 note executed by William Means to his father, Thomas W. Means, for the purposes of paying off William Means' indebtedness to the Labrot estate. If you did pay such sum out of said $75,000 to Miss Margaret Means, please state how you paid it; in currency, by check, or in what manner.

A. I paid by check on the Ashland National bank.

X Q. 9. Have you those checks in possession?

A. I have. Here they are.

X Q. 10. Will you make the check for $70,257.68 dated Ashland, Ky., 28th of February, 1890, drawn on the Ashland National bank payable to the order of Margaret A. Means, signed John Means, a part of your deposition; also a check on the Ashland National bank of same date for $4,742.32 signed John Means, payable to Thomas W. Means, cr., his ac.? Will you also have the same copied into the record as a part of your answer?

A. I do. The check for $70,257.68 is as follows:

No. —. ASHLAND, KY., 28*th Feb'y*, 1890.

Ashland National bank

Pay to order of Margaret A. Means seventy thousand two hundred and fifty seven $\frac{68}{100}$ dollars in current funds.
$70,257.68. JOHN MEANS.

Endorsed: Margaret A. Means.

The check for $4,742.32 is as follows:

No. —. ASHLAND, KY., 28*th Feb'y*, 1890.

Ashland National bank

Pay Thos. W. Means, cr., his ac. or bearer forty-seven hundred and forty-two $\frac{32}{100}$ dollars.
$4,742.32. JOHN MEANS.

No endorsement.

X Q. 11. Is it or not the fact that the $45,000 which you have heretofore testified to having paid Miss Margaret Means in consideration, as you claim, of the $45,000 note executed by William Means to Thomas W. Means, is included in this check for $70,257.68?

A. The notes which Thomas W. Means executed to Mar-
749 garet Means on the 3rd of December, 1888, for $45,000 is included in this check—the payment.

X Q. 12. What consideration was that for the execution by Thomas W. Means of the $45,000 note to Margaret Means?

Objected to because it calls for a legal conclusion and because the fact- connected with the execution of that note have all been inquired of by the counsel for complainants and the answers full and explicit heretofore in the cross-examination of this case of this witness.

A. William Means executed his note to Thomas W. Means for the same amount, which was dated some days before this 3rd of December and sent by mail from New Haven or New York, whichever place he was at, for the money which was to be applied to the payment on the Labrot debt.

X Q. 13. Now, Mr. Means, I will again ask you if the $45,000 which was paid to Margaret Means was not in fact paid on account of the note executed by William Means to Thomas W. Means heretofore referred to, and whether or not that $45,000 is not included in this $70,000 check?

A. This $45,000 is paid to Margaret Means and is not a payment of the William Means note. The $45,000 for the note and interest on it, and other notes and interest, are included in this check.

X Q. 14. Now, Mr. Means, I will ask you again if the $45,000 which you paid to Margaret Means was not in fact paying the note of William Means which was executed to Thomas W. Means

for the payment of the Labrot Trust, for what payment was it made?

A. This was in payment of Thomas W. Means' note to Margaret Means for $45,000.

X Q. 15. Now, Mr. Means, I will ask you whether or not this note which was executed by Thomas W. Means to Margaret Means was not executed, as you claim, for the purpose of paying off the Labrot Trust, the very identical money for which William Means had executed a $45,000 note to Thomas W. Means a few days previous to the execution of the note by Thomas W. Means to Margaret Means?

A. This payment to Margaret Means was to pay Thomas W. Means' note to her.

X Q. 16. Last question repeated.

A. This money of Margaret Means was to pay the $45,000 of the Labrot Trust and debt. It was agreed to pay, and did pay, as I was advised.

X Q. 17. What necessity, Mr. Means, was there for Thomas
750 W. Means executing a note to Margaret Means to pay the identical amount for which William Means had executed his note to Thomas W. Means to pay, namely, the Labrot Trust money? Was not Thomas W. Means as able to pay this sum as Margaret Means, his daughter?

Objected to because it calls for an opinion and not for a fact.

A. It was William Means' necessity the debt should be paid. Thomas W. Means was quite as able to pay it as Margaret Means or any one else of his children.

X Q. 17. I again ask you what necessity there was, or what reason, for Thomas W. Means executing the note to pay the identical sum which William Means had executed his note to his father to pay?

A. William Means wanted this debt paid. He executed his note to father to have him pay the amount. There was no Labrot trustee appointed. William Means was still the trustee. It could not be paid to him. He did not want to receive it. He wanted to get rid of it and I had paid to my sister to hold to be paid when it could be paid.

X Q. 19. Mr. Means, my question seems to be simple and easily answered. You have stated in your former answer that Thomas W. Means was quite as able to pay this money as his daughter. I again ask you if you will please answer why, after William Means had executed a note to his father for $45,000 for the Labrot Trust, your father executed another note for the same purpose to Margaret Means, and for the same amount, a few days afterward?

A. To have Margaret Means pay the amount.

X Q. 21. What was the necessity, or what was the reason, for having Margaret Means pay off William Means' indebtedness to the Labrot Trust instead of Thomas W. Means, when you have said that Thomas W. Means was quite as able to pay it, if not more so, than Margaret Means, his daughter?

A. Thomas W. Means was old and blind, probably would not live a great while. Margaret Means was younger and the chances were that she would live longer than he—as she in fact has proven—and that it could be settled better by the living person than with the estate of the dead person.

X Q. 22. Were not you at that time acting under a power of attorney from Thomas W. Means and does not this record disclose the fact that, with this single exception, you, as his attorney-in-
751 fact, made all these payments and transacted all this business up to this single transaction?

A. I think it does, and also that I did this transaction.

X Q. 23. Is it not the fact, and does not this record disclose the fact, that it was through your instrumentality that the $45,000 note was obtained in 1888 from William Means to Thomas W. Means for the payment of the Labrot Trust?

A. It is.

X Q. 24. All the notes that were paid off, as you claim, by your father through you as his attorney, except in this single instance, were paid off by your father through you as his attorney, were they not?

A. All the notes which I paid as attorney for my father, I paid as attorney for my father.

X Q. 25. You have stated that all the notes except this one were paid by you as the attorney of your father. I again ask you why this one was not paid in the same way.

A. I did pay it in the same way.

X Q. 26. How did you pay it?

A. I paid it by this check to Margaret Means that we have been testifying for the last half hour about.

X Q. 27. Did you pay off the note executed by Thomas W. Means to Margaret Means for $45,000, or the note executed by William Means to Thomas W. Means?

A. I paid the note executed by Thomas W. Means to Margaret Means and never claimed to have paid the note of William Means. The note of William Means was unpaid the last I knew of it or had the note.

X Q. 28. The $4,742.32 check was paid by you to Thomas W. Means and not to Margaret Means; she did not get that money, did she?

A. No. She got the $70,000 check.

X Q. 31. Mr. Means, when was the settlement of the Labrot Trust made and when did Margaret Means pay it off, if you have any data by which you can fix it?

A. I was not here and do not know anything about it. The record shows it, I think, in two places.

X Q. 32. The record shows the dates at which Margaret Means paid two amounts for William Means' indebtedness to the Labrot Trust, which was quite a time after the payment of the $45,000 by you to Margaret Means. What necessity was there, in view of the fact that William Means had executed his note to Thomas W

752 Means for $45,000 to be paid on the Labrot Trust, and as it appears Thomas W. Means executed his note for the same amount and for the same purpose, that Margaret A. Means should be paid the $45,000 in money so long prior to the settlement and payment of it over to the parties authorized to receive the money for the Labrots?

A. I do not know what necessity. Thomas Means wanted to pay his debt to stop interest and he paid it.

X Q. 33. Where were you in October, 1888, at the time the note of Thomas W. Means was executed to Margaret A. Means?

A. In October, 1888, I was at home—traveling about. There was no note executed to Margaret Means in October, 1888.

X Q. 34. Where were you at the time that Thomas W. Means executed the note for $45,000 to Margaret A. Means?

A. In Ashland, Ky.

By Mr. ANDERSON: I believe that in some part of the record probably appears the payments for which this check of $70,257.68 was given to Margaret Means. I will now ask you to state briefly from the books what the items were for which that check was given, and also the check $4,742.32.

A. On page 205, Journal B, Thomas W. Means' book, the following entry appears:

Balance of note dated 15th Feb'y, 1888.....	637 50	
Note dated 20th Feb'y, 1888	18,853 13	
Note dated 3rd December, 1888.....	45,000 00	
		64,490 63

All these notes in favor of Margaret A. Means by Thomas W. Means.

Interest on first-mentioned note.....	147 56	
Interest on second note.....	2,284 99	
Interest on third note.....	3,334 50	
		5,767 05

The defendants now offer in evidence certified copy of the will of Thomas W. Means, which is made a part of the record by agreement of both parties. Copy of said will is as follows:

Mr. WHITAKER: Is it or not a fact that the $45,000 note, dated December 3, 1888, executed by Thomas W. Means to Margaret A. Means, antedated—that is, does it bear the date upon which it was absolutely executed, or was the note executed long after December 3, 1888?

A. The note was executed on the 3rd day of December, 1888, and it is entered on the book the same date.

Mr. ANDERSON: I do not now recall anything else we have now to offer.

753 SATURDAY, *January* 14, 1894.

Present: Same as before.

H. P. WHITAKER, called for complainants, being by me first duly sworn, testified as follows:

Direct examination by Mr. GLIDDEN:

Q. 1. You are one of the attorneys of record in this case?
A. I am.
Q. 2. Mr. E. C. Means testifies that in February or March of 1890 you came to his office in the Ashland Coal and Iron Railway Company, at Ashland, stating that you wanted to see John Means, and that you and he had a conversation together at that time in that office. Do you remember that occurrence?
A. I do.
Q. 3. State whether in that conversation anything was said by you to E. C. Means about your desiring to see his father, John Means, and the purpose for which you desired to see him?
A. I did state that I came there to see John Means in reference to William's interest in his father's estate.
Q. 4. Did you make any statement to him as to what there was pertaining to that interest?
A. I did.
Q. 5. That you wished to see his father about?
A. I did; talked fully with him about it.
Q. 6. State what was said by you in regard to that matter at that time to him?
A. I said to him that an arrangement had been made by William Means by which he desired to execute a trust giving to his wife and children the prospective interest in his father's estate. Mr. Means said that his father was in the country—Mr. John Means—and that his condition was such that he was not attending to any business and that he could not aid me in bringing me to Mr. John Means for any purpose whatever.
Q. 7. State whether at that interview you informed Mr. E. C. Means that William Means had agreed to settle his expectancy in his father's estate in trust for the benefit of his family?

Objected to because leading and suggestive.

A. I did so inform him. That was my sole object in going there and the only object of my visit, for the purpose of getting Mr. John Means to co-operate in bringing about and effecting the trust matter whereby Mr. William Means' family would have the benefit
754 of his prospective interest in his father's, Thomas W. Means', estate.
Q. 8. At that time whom did you represent in this matter?
A. I represented, together with yourself and Gen. John Little, of Xenia, Ohio, Mrs. William Means and her three children.
Q. 9. Now, what was the purpose of your visit to Ashland at that time? Why did you go there?
A. I went there at the instance of attorneys of William Means,

and ourselves as attorneys of Mrs. Means and her children, after full consultation upon the subject, to, if possible, effect the execution of this trust, with the consent of Mr. John Means, whom we considered to be the head of the family and the acting agent in that matter, of Thomas W. Means.

The latter part of the answer is objected to as not responsive.

Q. 10. Was there any other matter about which you at that time desired to confer with John Means or the administrators of the estate of Thomas W. Means, except to advise them of the agreement by William Means to settle in trust upon his family his prospective interest in his father's estate and to confer with them about the details of its execution and confirmation?

Objected to as leading and because it assumes a fact not shown to exist.

A. Thomas W. Means was living at the time when I visited at Ashland in 1890, the latter part of February or the fore part of March as stated. I had no object in view other than that and no other business except to see John Means and have a full talk upon the subject of his co-operation in securing to the wife and children of William Means his respective interest in his father's estate.

Q. 11. Did you indicate that fact to Mr. E. C. Means?

Objected to as leading.

A. I did. All my conversation was with Mr. E. C. Means on that subject. I did not see Mr. John Means as stated. I could not see him for the reason that Mr. Cook Means said it would be impossible for me to have any business transactions with him.

Q. 12. At the time that you had this conversation with Mr. E. C. Means, did he say anything about any claim that the estate of Thomas W. Means had by note or otherwise against the interest of William Means?

755 A. He did not.

Respondents interpose an objection to all and every part of the evidence given by this witness upon the grounds that it is, if competent at all, evidence in chief and that it being matters of fact within knowledge of counsel who has been present at former examinations, it is not now competent to introduce it.

Cross-examination by Mr. ANDERSON:

Q. 13. Mr. Whitaker, you have referred to statements as to the interest of the wife and children of William Means. What interest did you refer to?

A. I referred to his prospective one-fifth interest in the estate of Thomas W. Means.

Q. 14. Well, perhaps I did not make my question clear. What interest had you in your mind that you were referring to?

A. That interest.

Q. 15. It was the interest that they held in that interest, is what I am referring to. What was that interest?

A. It was the interest that they would hold in the estate as beneficiaries under the trust, which Mr. William Means had agreed and proposed to make, as I understood it.

Q. 16. Had agreed at what time?

A. At Xenia about ten or fifteen days previous to my visit to Ashland to see John Means.

Q. 17. Who was present when it was done?

A. John J. Glidden, William Means, Evan F. Williams, Gen. John Little, and I think his partner, Mr. Spencer; I am not quite sure. I was there also.

Q. 18. Is that the interest to which Mr. Williams refers in his evidence when he testified with reference to the agreement at Xenia?

A. I do not know, sir. I presume it is. I am not certain now as to what his testimony was on that subject. I am testifying in regard to it solely upon my own knowledge and not that of any one else.

Q. 19. Did you at any time go to Ashland when Mr. Means was dead and before he was buried, with a view of having a deed executed by William Means with reference to conveying any interest to his wife and children?

A. I went to Ashland without any view to antedating any instrument. I went to Ashland upon a telegram of William Means to me and Evan F. Williams jointly. Mr. Evan F. Williams, the attorney of William Means, left Ashland and came to Cincinnati the day before the death of Thomas W. Means. He came
756 here with the view, as he said to me, that William Means desired that Mr. Glidden or myself or both of us should come to Ashland and execute the deed of trust at once as his father could not live but a few days. I think the morning, perhaps, before his father's death—I am not quite sure as to the time of the telegram—Mr. William Means telegraphed to myself and Mr. Williams to come at once to Ashland, that his father could not survive very long. That telegram I had but I have mislaid it. It is possible that it may be obtained at the Western Union office. I, attorney of Mrs. Means and her children, was acting in conjunction with Mr. William Means for the purpose of securing this interest of William Means at his request in trust for the benefit of the wife and children of William Means.

Q. 20. What I am seeking to know is, whether the execution of the deed you were then speaking of had reference to the carrying out of the agreement you have referred to in Xenia?

A. It was. I desire to say in connection with that, that I have had a great many conversations with William Means in regard to this trust and never at any time from the inception of it or his agreement at Xenia, did he manifest any disposition to recall it at any time to me.

All but the words "It was" objected to and moved to be stricken out because not responsive to the question.

Q. 21. When you started to Ashland, from what point did you start; here or Xenia?

A. I started from here—from Covington, my home. I will say in addition to that, that Mr. Williams went with me on that trip in obedience to the telegram to which I have referred.

Q. 22. Now, had you learned, before you started, of the death of Thomas W. Means?

A. I do not think I had. I am not sure about that. I may have. It is possible we got two telegrams. At all events, I know he was dead when we got there.

Q. 23. You saw William Means at Ashland, or after he left Ashland at that time?

A. I did not see him on that occasion at all. It was not thought proper to enter into any transactions during the time that his father was lying dead at his residence. Mr. William Means sent me word by Mr. Williams.

Q. 24. Can you state just what you said to Mr. Cook Means upon that subject? You have stated, as I understand, what you understood to be the effect of it, but can you give what took place—the conversation—the substance of it?

757 A. Mr. Cook Means has detailed in his testimony a portion of what took place. There was nobody present but ourselves. It took place at the A. C. & I. office, as stated. My business was, as I conceived it, important and imperative. My conversation with Mr. Means was entirely of a business character, in which I explained to him fully the reason of my visit there. It was for the purpose, as I told him then and there, to secure the prospective interest of William Means in his father's estate in trust for the benefit of his wife and children. He asked me if that was William Means' request. I said it was; that a few days previous to that we had had a meeting at Xenia, Ohio, at which Mr. Glidden and myself and John Little, the attorneys of Mrs. Means and her children, were present, and Mr. Evan Williams and Mr. William Means were there also, and Mr. Evan Williams being the attorney of Mr. William Means; that it had been there agreed that this trust should be executed; that I had come there to talk with his father, having learned from Mr. William Means and from the family generally in their talks that Mr. Thomas W. Means was not in condition to transact business and that John Means was the proper person to see and that he was acting, as was represented to me, as the agent of his father in the transaction of his business. Mr. Cook Means asked me if I was acting as the attorney of Mr. William Means. I said I was not; that I had come there with the full knowledge and consent of Mr. William Means, but I was not the attorney for him; that Mr. Evan Williams was his attorney, and that we had had a consultation and it was thought best that I should go and see Mr. John Means with a view of bringing about this trust and the execution of it. Mr. Cook Means was reticent on the subject. He said upon that occasion that William Means was largely indebted in Cincinnati, that he owed the Metropolitan National bank a large sum of money, and other creditors, and that William Means ought not to enter into a

trust arrangement by which his interest in his father's estate should be diverted from the payment of his just debts; that those debts were honest debts and that he ought not to take that course. I then explained to him our theory of the matter, the theory of General Little and of Mr. Glidden and myself in regard to the trust being an arrangement in equity whereby this interest could be trusteed; that the debts of William Means were never contracted with a view of its being paid out of the interest in his father's estate. I explained to him our view of the law of that matter. He still insisted that
758 that was not a proper thing and ought not to be done; that the creditors were entitled to his interest in that estate and should be paid out of it. At that time, which was in January or February or the fore part of March—I have since learned from the records of this case—that all these claims, these notes that were executed by William Means, or purport to have been executed by William Means, to his father, were in existence. I did not know it then. Mr. Means made no claim at that time and in that conversation that there were any offsets against his interest or that there were any claims against the interest of William Means. Our conversation was very pleasant. Mr. Cook Means said that his father's condition was such as I have already said, that he could not assist me to see his father to talk upon the subject. I then retired from the office and went up to the hotel. I think I went up to see Mr. Hager, an old friend of mine, at his office. Mr. Cook Means came up and called on me at the hotel again in the afternoon and we sat there and chatted pleasantly, but I do not think we had any further talk about the trust matter in any way, shape or form. I had no business with Mr. Cook Means to transact. My business was with Mr. John Means, and I made it known to Mr. Cook Means as he was the only agent through whom I could get access to Mr. John Means. Now that is pretty nearly the conversation that took place in regard to this matter. It was a straightforward presentation of the matter as I understood it, and as I was directed to do not only by Mr. William Means but by my associate counsel and our clients, Mrs. Means and her children.

The question being with respect to what witness said to Mr. Cook Means as to the trust or concerning the trust, any other matters in the answer not responsive to that question are objected to as not responsive and motion is made to strike them out.

Q. 25. You knew at this time, Mr. Whitaker, did you not, that Mr. Thomas W. Means was adjudged *non compos* and that a committee had been ordered for him?

A. That is not a fact, Mr. Anderson. He was not adjudged a lunatic at that time. He was adjudged a lunatic in May, this record shows. I only knew of his imbecility from the communications of Mr. William Means and his family and also through Mr. Glidden who had visited Ashland with Mrs. Means and had met Mr. Thomas W. Means and I knew nothing of it outside of those communications.

Q. 26. At the time you went there in June, '90, I believe it was, did you know anything about these notes?

759 A. No, sir.

Q. 27. When did you first learn of them?

A. I did not know anything about these notes at all—that is, I had heard of them, before the commencement of this suit a little while. These notes and these settlements gradually came to light in the investigation of this case, months after my visit and my conversation with Mr. Cook Means in regard to the trust. So far as I know, the attorneys of Mrs. Means did not know that there was any claim of set-off occasioned by money claimed to have been advanced to William Means in his troubles which was to be offset against his prospective interest in his father's estate.

* * *

All of said answer except such part as states that he learned of these notes shortly before the commencement of this suit is objected to as not responsive to the question and as irrelevant and incompetent and asked to be stricken out.

Recess until 2 p. m.

PATTI MEANS, called on behalf of complainants, being by me first duly sworn, testified as follows:

Direct examination by Mr. GLIDDEN:

Q. 1. State your name, age, and relationship, if any, to William Means?

A. Patti Wilhelmina Means; I was twenty last month—December; I am his daughter.

Q. 2. Do you remember being present at any conversation between your sister, Miss Margaret Means and your uncle John Means, in the latter part of the year 1888?

A. I do.

Q. 3. Where did the conversation take place?

A. In the back parlor of our house at Yellow Springs.

Q. 4. State whether on that occasion there was any conversation between your sister and your uncle John Means with reference to your fitting yourself to take care of yourself, provide your own living, and with reference to the estate. State what was said?

A. We both had a conversation with Mr. John Means. First I had one with him, in which I told him that I was then quite young and I could easily study and prepare myself to earn my own living in some way, that I could go to New York and stay with my sister who was studying for the stage at that time, and that I could

760 study with her and go on the stage also, and he said that Pearl had done very wrong in going on the stage, and that her place was at home with mother and that there was ample provision coming to us from our grandfather's estate and that we should do nothing of the sort, and he was quite angry at the idea.

Q. 7. What did Miss Gertrude say?

A. She asked the same question, whether she could not fit herself for making a living, and he said, no, that there would — plenty for

us from our grandfather's estate. I think "ample" was the word he used.

Q. 8. Who was present?

A. Gertrude and myself.

Q. 9. And your uncle John?

A. Yes, sir, and Uncle John.

Q. 10. Any one else?

A. No one else.

Q. 11. I will ask you whether you had any conversation with your aunts, or either of them, in regard to that same matter and about the same time? I mean by your aunts, Margaret Means and Mrs. Adams?

M A. I heard Miss Margaret Means say—I do not know whether she said it to me, but I heard her say it—that there would be plenty coming to us from our grandfather's estate.

Q. 12. In reference to what was that remark made by your aunt?

A. It was just after the failure of the bank, and we were all discussing financial questions and it was not in reference to anything special. It was just the general failure we talked of—all that I ever heard said.

Q. 13. Now, Miss Patti, has any provision been made for your support or the support of yourself and sisters other than the trust deed we are now seeking to enforce?

Objected to as incompetent and irrelevant.

A. There were small sums, I think, sent to the family but I do not know. I was quite young when the bank failed and they did not tell me when they received these things, and discuss them with me.

761 At a session of the United States circuit court of appeals for the sixth circuit, held at the court-rooms, in the city of Cincinnati, Ohio, in said circuit, on Monday, June 22nd, 1896, the following proceedings were had, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

BENJAMIN R. COWEN *et al.*, Trustees,
vs.
THOMAS M. ADAMS *et al.*, Ex., etc. } # 367.

Appeal from the circuit court of the United States for the district of Kentucky.

Present: Hon. Horace H. Lurton, circuit judge; Hon. Henry F. Severens and Hon. E. S. Hammond, district judges.

This cause came on this day for hearing and was argued by Mr. John Little for the appellant and by Mr. Lawrence Maxwell, Jr., for the appellees, and the hearing of the case was continued until to-morrow morning at 9.30 o'clock.

And afterwards, on June 23rd, 1896, the following entry was made upon the journal of said court in said cause, clothed in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

BENJAMIN R. COWEN *et al.*, Trustees,
vs.
THOMAS M. ADAMS *et al.*, Ex., etc. } # 367.

Appeal from the circuit court of the United States for the district of Kentucky.

This cause came on this day for further hearing and was argued by Mr. Lawrence Maxwell, Jr., and Mr. John Hagar for the appellees and by Mr. John J. Glidden for the appellants, and was submitted to the court. Appellants are given five days within which to file briefs and appellees five days in which to respond thereto.

762 And afterwards, to wit, on February 8th, 1897, an opinion was rendered in said cause in said court clothed in the words and figures following:

Opinion.

763 Before Lurton, circuit judge, and Hammond and Severens, district judges.

This is a suit in equity brought in the circuit court for the district of Kentucky, by the above-named appellants as trustees under a deed of trust executed by William Means on the 26th day of December, 1891, and which purported to convey all the interest of the said William Means as devisee under the will of his father, Thomas W. Means, in trust for the purposes recited in a certain decree of the court of common pleas of Greene county, Ohio, against the defendants, Thomas M. Adams and E. C. Means as administrators with the will annexed of the estate of Thomas W. Means, and John Means who had been connected with the transactions out of which the controversy grows. As the appeal is not prosecuted as against John Means, it is not necessary here to state the particular relationship of John Means to the subject-matter of the suit in respect to his liability to account. The object of the suit is to set aside a certain instrument of settlement and receipt given by William Means to the above-named administrators on the 16th day of October, 1890, and for a declaration establishing the right of the said trustees to recover in virtue of the interest of William Means as legatee, a one-fifth interest of the estate of the said Thomas W. Means, and for an accounting and payment to them of the amount of the legacy bequeathed to the said William Means.

In order to a proper understanding of the grounds of the decision of this court it is necessary to give a brief account of so much
764 of the history of the prior events and of the transactions involved in the controversy as are deemed by the court material, supplemented, however, by some further incidental facts which are stated in the opinion. Thomas W. Means was on the 20th day of July, 1880, and for many years prior thereto had been, a resident of Hanging Rock in the State of Ohio, and had reached the age of

seventy-seven years. He had been an active and capable man engaged in many kinds of business enterprises, and had accumulated a large property, amounting to seven or eight hundred thousand dollars. He had had five children—John, William, Mary, Margaret and Sarah—the latter of whom had married one Culbertson. Previous to the date just mentioned, Mrs. Culbertson had died, leaving her son, Thomas M. Culbertson, as her only heir. These five persons, the four children and the grandson, were all living at the date referred to. Prior to that time he had been in the habit of assisting his children, and in that way had already advanced to them large sums of money. He had opened accounts with each of them, in which he had charged them with the sums which he had furnished them and given them credit for various items to which he had conceived them entitled for the purpose of keeping these accounts. He had assisted some of his children in business, introducing them into various enterprises in which he was himself concerned, and when such enterprises had been disastrous or unprofitable, had charged off the losses to himself or furnished them with the means to balance up their losses and take a fresh start, his purpose seeming to have been while he lived to take upon himself such burdens and help them along through their misfortunes and discouragements. At one time, on December 9, 1873, he made a gift to his children of four hundred thousand dollars, eighty thousand dollars to each. Previous to that time he had advanced them in all, more than two hundred and fifty thousand dollars. Without for the present going into further particulars of this kind, Thomas W. Means, on the said 20th day of July, 1880, made and executed his last will, the 4th and 5th paragraphs of which are here given.

"4. I give, devise and bequeath all the residue and remainder of my estate, personal, real and mixed, wherever situated or located of which I shall die possessed, to be equally divided among my four children, John Means, William Means, Mary A. Adams, and Margaret A. Means, and my grandson, Thomas M. Culbertson, (son and sole heir of my deceased daughter, Sarah Jane Culbertson), who shall be living at the time of my decease, and the issue of any child, now living, and of said grandson, who may then have deceased, such issue taking the share to which such child or grandson would be entitled if living. But said share given, devised and bequeather to said grandson or his issue is to be held in trust as hereinafter provided, and to be subject to the provisions hereinafter contained as to said grandson's share.

"5. I have made advances to my said children which are charged to them respectively on my books, and I may make further advances to them respectively, or to some of them, and to my said grandson, which may be charged on my books to their respective
765 accounts, I desire the equal provision herein made for said children, and the provision for said grandson, to be a provision for them respectively, in addition to said advances made, and that may hereafter be made and that in the division, distribution and settlement of my said estate said advances made, and that may hereafter be made, be treated not as advancements, but as gifts not

in any manner to be accounted for by my said children and grandson or any of them."

After the making of this will the testator continued to make advances to his children and to keep regular accounts with them as he had previously done. To some of them he advanced very considerable sums, thus:

To John Means he supplied $20,685; William Means $41,590; Mary A. Adams, $48,792; Margaret A. Means $55,568.

These with former advances made up the sum of $100,000 to each, exclusive of the $80,000 which as above stated he had given to each of them. No advances appear to have been made to the grandson, Culbertson, the reason probably being that he was a minor, and perhaps also because he had other resources, on his paternal side.

John Means, the oldest son, was himself a prosperous man, and acquired a considerable fortune. William established himself in Cincinnati and became a man of distinction there, being at one time mayor of the city. He became president of the Metropolitan National bank, one of the leading financial institutions of the city. He acquired, and for many years maintained, the reputation of being a sound and capable business man. But the Metropolitan National bank, which had for some time been laboring under heavy embarrassments resulting from mismanagement and irregular dealings with its funds by the president, became so much involved that in February, 1888, it failed and directly went into the hands of a receiver. By reason of his defalcation as trustee for large properties and of his irregular transactions in the affairs of the bank, William Means became deeply involved, not only with respect to his character and standing as a man but also in respect to his financial affairs. Proceedings, both civil and criminal, were threatened and were imminent. While he had large and valuable collaterals, they could not be presently realized upon, and if they could have been realized in full they would have been scarcely sufficient to have met his liabilities. In this state of affairs he turned to his father, who in 1884 had removed to Ashland, Kentucky, for help. The latter summoned to his counsel John Means, his other son, and after considering the ways and means of helping William out he sent John to Cincinnati to investigate affairs and do what should be found needful to relieve William in his embarrassed situation. The result was that on its being ascertained that William's indebtedness to the bank amounted to the sum of $125,911.74, John Means paid to the bank that sum and took an assignment to Thomas W. Means of all the collaterals which the bank held as security therefor, amounting in all, at their par value, to the sum of $182,350, their estimated saleable value being $146,000. This was on February 15, 1888. On the
766 following 22d day of February, at John's request, William Means executed his promissory note to Thomas W. Means for the sum of $125,911.74 which John had paid to the bank. The following is a copy of the note:

"CINCINNATI, O., *Feb.* 15, 1888.

"Due Thomas W. Means or order one hundred and twenty-five thousand nine hundred and eleven and $\frac{74}{100}$ dollars, with interest from date.

"$125,911.74. WILLIAM MEANS."

On the 11th day of March, 1888, John Means paid for William Means to the Bank of Ashland $15,027, to take up two notes given by William Means for which the Bank of Ashland held collaterals of the par value of $22,000, which were transferred to Thomas W. Means, and William Means thereupon executed to Thomas W. Means his promissory note therefor, as follows:

"YELLOW SPRINGS, O., *March* 19, 1888.

"One day after date I promise to pay to the order of Thomas W. Means fifteen thousand and twenty-seven dollars for value received.

"$15,027.00. WILLIAM MEANS."

On August 20, 1888, Thomas W. Means took up a note of William Means for $5,000.00, and William Means sent to Thomas W. Means his note for that amount with some accrued interest, as follows:

"NEW YORK, *August* 20, 1888.

"One day after date I promise to pay to the order of Thomas W. Means, five thousand forty-one and $\frac{67}{100}$ dollars, for value received.

"5,041.67. WILLIAM MEANS."

Another transaction of like character was the payment by Thomas W. Means to Hunt and Gurkey, of the sum of $2,100, for which, on October 24, 1888, William Means executed the following note:

"NEW YORK, *October* 24, 1888.

"One day after date I promise to pay to the order of Thomas W. Means, twenty-one hundred dollars, for value received.

"$2,100. WILLIAM MEANS."

At this stage of affairs, there appears to have been some scheme concocted for obtaining a *nolle prosequi*, in reference to the criminal prosecution which had been commenced in the Federal court on account of William Means' transactions in the affairs of the bank, or of obtaining a pardon therefor. In furtherance of this scheme, a note for $75,000 was made by William Means to Thomas W. Means, as follows:

"NEW HAVEN, CONN., *November* 22, 1888.

"One day after date I promise to pay to the order of Thomas W. Means, seventy-five thousand dollars. Value received, with interest from date.

"75,000. WILLIAM MEANS."

767 Appended to this note was the following:

"It is agreed as part of the transaction by which I have procured a loan of seventy-five thousand dollars upon the foregoing

note, that the amount thereof and all the interest shall be paid from my interest as devisee or distributee of the estate of Thomas W. Means.

"November 9, 1888.

"WILLIAM MEANS."

Exactly how this $75,000 was intended to be used does not appear. It is not shown that the money was actually employed, and the scheme was either not pursued or fell through. William Means was tried upon the indictments in the United States district court at Cincinnati and acquitted.

On the 22d day of November, 1888, another note was executed by William Means to Thomas W. Means for the sum of $45,000, as follows:

"$45,000. NEW HAVEN, CONN., *November* 9, 1888.

"One day after date, I promise to pay to the order of Thomas W. Means, forty-five thousand dollars, for value received, with interest from December 1, 1888.

"WILLIAM MEANS."

Appended thereto was the following:

"The above is for money loaned to me by Thomas W. Means, on account of my indebtedness as executor and trustee of the estate of A. Labrot, deceased, and it is agreed as part of the transaction, by which I have procured a loan of forty-five thousand dollars upon the foregoing note, that the amount thereof and all interest shall be paid from my interest as devisee or distributee of the estate of Thomas W. Means.

"November 22, 1888.

"WILLIAM MEANS."

John Means was acting as the agent of his father in all of these transactions, and used his father's funds in making the payments, on account of which the notes of William Means were given. Certain correspondence took place between John Means and William Means during the pendency of these transactions in relation to the giving of the above-mentioned notes by William Means, and the form in which they were put, to which the appellants refer as explanatory of the purpose for which the notes and the stipulations at the end of some of them, as above shown, were made. This correspondence is referred to in the opinion. Thomas W. Means, already eighty-five years of age, had, in 1888, become almost blind, and that affliction was increasing upon him; he was somewhat enfeebled in mind and quite infirm, and by June, 1889, had become quite imbecile. He had, up to that time, at least, had a general understanding of what was being done for William, and approved of it. He was deeply troubled at the calamities which had befallen his son, and felt a deep interest in relieving him. Soon after the above-mentioned transactions in aid of William were begun, John Means, with the assent of his father, opened up a separate account in his
768 father's books in his own name, as debtor, with reference thereto, in which *were* recorded the substance of the matters

of account involved, and in this separate account John Means continued the record of the transactions.

Thomas W. Means died June 8, 1890, and on the 28th day of the July following his death, Thomas M. Adams and E. C. Means were appointed administrators, with the will annexed. These persons—Thomas M. Adams and E. C. Means—had, a short time previous to the testator's death, obtained from William Means the following instrument:

"ASHLAND, KY., *June* 16, 1890.

"I hereby direct the executors of the will of Thomas W. Means, or the personal representatives hereafter to be appointed, to charge against my distributable share as heir-at-law of Thomas W. Means, or as devisee under his will, the notes heretofore given by me to Thomas W. Means; and I do further hereby assign such interest or share, or sufficient thereof to pay and discharge such notes.

"WILLIAM MEANS.

"Witness-:
"S. B. E. DRANAN.
"JAMES MEANS."

On the 17th, the day following, William Means delivered to the said Thomas M. Adams and E. C. Means the following paper:

"ASHLAND, KY., *June* 17, 1890.

"To whom it may concern:

"This is to certify that my object in signing a certain paper, dated June 16, 1890, in which the executors of the estate of Thomas W. Means are directed to charge up my obligations against my interest in said estate, was done to insure the estate against loss through the purchase of such obligations, no matter how obtained, and for no other purpose whatever.

"WILLIAM MEANS."

On the 28th day of July (although it bears date the 29th), Thomas M. Adams and E. C. Means, under appointment as administrators, endorsed upon the back of the paper above set forth, bearing date June 16, 1890, the following:

"This paper came into the possession of the undersigned June 16, 1890, and has been held jointly since. And now, as administrators, with will annexed, of Thomas W. Means, deceased, and upon our appointment and qualification as such, we note and indorse hereon its delivery and acceptance to and by us.

"E. C. MEANS,
"T. M. ADAMS,
"*Administrators, with Will Annexed, of Estate of Thomas W. Means.*

"July 29, 1890.

"Attest: JOHN F. HAGAR.
W. P. SEATON."

769 Then, also, on the day of the appointment of the administrators, July 28th, William Means delivered to the administrators an instrument of revocation, as follows:

"To the executors and legal representatives of the estate of Thomas W. Means, deceased, and to E. C. Means and Thomas M. Adams individually.

"GENTLEMEN: Inasmuch as by a certain paper, dated June 16, 1890, it is claimed that I authorized certain notes to be deducted from or charged against my distributable share as heir-at-law of Thomas W. Means, and further assigned certain interests to pay said notes. Now, this is to notify you, and all other persons interested herein, that I hereby revoke and annul said paper-writing, and all consent and authority conferred by it, and declare said paper to be null and void for any purpose whatever. And you are notified not to deliver said paper to any person or make any use of the same, and I make this notification for the following, among other, reasons:

"1. That said paper was not to be delivered without my consent.

"2. Said paper was wholly without consideration and inoperative for any legal purpose.

"3. Said paper was signed without legal advice or proper information as to the contents or meaning.

"4. Said paper was obtained from me in ignorance of important facts and of my legal rights.

"5. Said paper was obtained under circumstances that make it inequitable that I shall be bound by it.

"6. Said paper was not intended to be used in any manner against my interests or desire.

"Yours respectfully, WILLIAM MEANS.

"Ashland, Ky., July 28, 1890."

On the October 4th following, William Means revoked his revocation of July 28th, by the following indorsement upon the margin thereof:

"To E. C. Means and Thomas M. Adams, administrators, with the will annexed, of Thomas W. Means:

"The matter of revocation contained in this notice and paper are hereby revoked.

"WILLIAM MEANS.

"October 4, 1890.

"Attest: JOHN F. HAGAR."

On the 16th of October, William Means gave the administrators the following receipt:

"ASHLAND, KY., *October* 16, 1890.

"Received of Thomas M. Adams and E. C. Means, administrators, with the will annexed, of the estate of Thomas W. Means, deceased,

the sum of one hundred and thirty-six thousand and thirty-
770 five and seventy-five one-hundredths dollars, being a part of my distributable share as legatee under said will, applied by them as ordered by me upon the following notes and claims owed by me to the estate of said decedent, and payable to his order, viz:

("Here follows description of ten notes, with balance due on each, aggregating $136,035.75.)

"This receipt is given in pursuance of settlement made October 16, 1890.

"WILLIAM MEANS.

"Attest: JOHN F. HAGAR.
"A. E. LAMPTON."

On the same day the administrators took from William Means a further receipt, which was dated the 17th and changed to the 18th, for the sum of $26,240.79, as a part of his share in the estate, the money to be paid to his brothers and sisters on account of antecedent debts, if there should be enough left for the purpose, after paying the above-mentioned ten notes. It appears that the sisters were unwilling to carry out this part of the proposed arrangement and the receipts were returned to William Means by the administrators shortly afterwards.

On October 23, 1890, William Means received from E. C. Means the notes of William Means which had been taken up from the Metropolitan National bank February 15, 1888, amounting to $125,911.74, and received also certain collaterals, which had been taken by John Means for his father at the time when he paid William Means' obligations. There is evidence tending to show that William Means, at the time when he signed the instrument of October 16th, was induced to do so by the expectation that he would in some way get the expected surplus of $26,240.79, which was, at about the same time, receipted for by him to be paid to his brother and sisters, as above mentioned, but the evidence does not disclose very clearly in what way this was to be accomplished. The appellants introduced evidence which, they claim, tends to show that some time in February, 1890, William Means, having fallen into a pecuniary controversy with his wife and children (more particularly his wife), and being pressed for a settlement upon them, with the intention of satisfying such claims and reconciling their differences, entered into an agreement whereby he undertook to assign and transfer to them his expectancy in his father's estate. It appears from the proof in the case that a suit was commenced in the court of common pleas of Greene county, Ohio (where the wife and children then resided), by them, against William Means, for the purpose of compelling the specific performance of such an agreement as having been made in 1890. Process was served upon William Means, but he did not defend the suit. The case was heard upon the pleadings and proof introduced before the court, and thereupon a decree was rendered finding the existence of the agreement above mentioned, and s-bstantially decreeing a specific performance
771 thereof, directing the defendant, William Means, to execute

a deed of trust, conveying his expectancy to the present complainants as trustees—

"Upon the trust that they take possession of all of said property and convert it into money, and hold and invest the same upon security such as is required by a guardian under the laws of Ohio, being hereby vested with all the authority and powers necessary or appropriate for such purpose, and that they apply the net increase thereof, and so much of the principal as may be necessary, to the reasonable support of the family of William Means, including himself, the plaintiffs and their said mother; provided, that upon agreement in writing, of all the parties, as to distribution of said trust funds, the trustees shall execute such agreement," with other incidental details and directions. And such a deed was executed by William Means, December 26, 1891.

The answer of the defendants sets up and claims that the sums advanced by Thomas W. Means to William Means, on and after February 15, 1888, were loans, and were not included in the scope of the will of Thomas W. Means, whereby advances of the kind therein described were to be forgiven; that therefore, the administrators are entitled to set off the demand of the estate arising thereon against the legacy directed to be paid to William Means; and further, that if this were doubtful, the questions creating the controversy on this matter have been settled by and between the administrators and William Means, without notice of any assignment by him to the complainants, and that upon such settlement they have given up to the said William Means certain valuable securities. And incidentally, they claim that the alleged agreement for an assignment to the wife and children, which formed the basis of the judicial proceeding in Greene county, did not in fact exist; and they also insist, on this appeal, that the suit is defective for want of proper parties defendant, it being urged that the other legatees under the will of Thomas W. Means should have been made parties to the suit. Upon hearing the case on the pleadings and a voluminous body of proof, the presiding judge in the court below rendered an opinion, in which he suggested a difficulty in dealing with the case for the purpose of distribution, arising from the want of necessary parties to the suit; but, nevertheless, the court proceeded to discuss and decide the merits of the case, reaching the conclusion that the sums paid for the benefit of William Means were loans, not intended to be covered by the bequest in the will; and holding, further, that the question of the validity of the settlement by William Means with the administrators ought not to be decided in the present suit, but be postponed until the general settlement of the estate should be had with all the necessary parties before the court. Thereupon, the following order was entered:

"This cause came on to be heard at this term, and was argued by counsel, and thereupon, on consideration thereof, the court finds the issue joined against the plaintiffs and in favor of the defendants, and the bill is dismissed as against the defendant, John Means at the cost of the plaintiffs. The plaintiffs are given leave, within
772 thirty days, to amend their bill, so as to make it a bill for the general settlement of the estate of Thomas W. Means, but

such amendment must be upon the basis of the conclusions of the court upon the issues already joined, as stated in the opinion herewith filed; and, in default of such amendment, the bill shall stand dismissed as against all the defendants, at plaintiffs' cost."

The complainants having declined to amend their bill by bringing in other parties, a decree absolute was entered on the 31st of July, 1895, dismissing the bill, with costs, but without prejudice to the right of the complainants to recover in another suit the amount of said William Means' legacy, over and beyond the amount of the receipt of said William Means, for $136,035.75, and without prejudice to any issues not joined and found against them in this suit. It should further be stated that the court below held that John Means acted as the agent of his father in the transactions involved in the controversy, and was, therefore, not liable to account to the complainants. Accordingly, the bill was dismissed as against him, unconditionally. The complainants appealed against both parts of the decree, that in favor of John Means, as well as that in favor of the administrators; but they have since dismissed their appeal as against John Means, thus leaving only the question of the correctness of the decree of the court below in respect to the principal questions in the case touching the transactions in the furnishing of money by Thomas W. Means to William Means, and the settlement and receipt between the latter and the administrators.

SEVERENS, district judge, having made the foregoing statement of facts in the case, delivered the opinion of the court:

The first question in due order, which we are required to decide, is whether the suit is defective for the want of parties in respect to the object sought to be attained. The suggestion of the defendants is, that the other legatees than William Means should have been made defendants. The object of the bill is to obtain a decree setting aside a receipt given to the administrators by William Means for the legacy given him by his father's will, and establishing the right of the complainants to recover the amount of such legacy. It cannot be doubted that the subject-matter of the suit is one of equitable cognizance, and that the bill was filed in the proper court.

Payne *v.* Hook, 7 Wal. 425.

Byers *v.* McAuley, 149 U. S. 608.

The transactions in which the receipt was obtained were conducted in behalf of the estate by the administrators, and by them only. They alone represented the estate, and they are its sufficient representatives in a suit to set it aside. In respect to the other branch of the relief sought, attention must be given to the essential nature of the controversy. It related substantially to the question whether certain funds which had been supplied by Thomas W. Means to
Williams Means were in the nature of a debt to the estate, and
773 so competent to be set off against his legacy. This is the
theory of the counsel who represent the administrators, and we think it is entirely correct. Administrators and executors are possessed of the legal title to the personal property of the estate. If

there is a debt, they have a right to it in their representative capacity. In any controversy as to whether it is a debt or not, they are the proper litigants, and the only proper ones on that side of the controversy. They are trustees of the estate, and whether a certain claim is or is not parcel thereof, is to be determined *in* a suit, in which they stand for the estate. That there are legatees who are consequentially interested in the result, does not make it necessary that they should be present in the suit, unless in a case where the trustees behave fraudulently toward them. The beneficiaries may sometimes be proper parties, but ordinarily, at least, they are not necessary parties. The controversy, as above stated, is the only one which exists, except that which relates to the receipt. No one questions the existence of the will, or the right of William Means to the legacy, and the only question is, as before stated, whether he owes a debt to the estate which must be set off against it. The question in this case is one relating to personal property only. The administrators have not the title to real estate; that passed directly to the devisees. The personal property they take from the hand of the administrators. We think that the administrators were the competent representatives of the estate, and the only necessary ones as the controversy now stands. It may be that the court cannot go so far as to order distribution, but it may go so far as to determine the right of complainants, and set aside the receipt, if that should be held proper. This would be no new thing. There are several cases in the supreme court and circuit court reports, where that has been the limit of the action of the court. Payne *v.* Hook, *supra*, is one of them and is familiar. Nor is the bill premature for such purposes.

In the court below no question was raised as to the necessity of other parties until the hearing, when it seems to have occurred to the court that the suit might, on bringing in the other legatees, be treated as one for the settlement of the estate and proceed as such. In his opinion, the learned judge held against the complainants on the principal question, "that the balance due by William Means to the estate of his father at his death was properly a debt and not a gift." The court thereupon caused to be entered an order, giving leave to the complainants to amend their bill, so as to make it a bill for the general settlement of the estate of Thomas W. Means, but that such amendment must be upon the basis of the conclusions of the court upon the issues already joined, as stated in the opinion of the court, and that in default of such amendment, that the bill be dismissed. The complainants having declined to amend, the court directed the following decree, which was entered:

"The complainants having failed and declined to amend their bill herein, as permitted by the order entered May 25, 1895, or within the extended time allowed by subsequent orders of this court,

it is now adjudged and decreed that their said bill be, and
774 the same is hereby, dismissed, and the defendants shall recover their costs herein expended.

"But this dismissal is without prejudice to the right of complainants to recover in another suit the amount of one-fifth interest in the estate of Thomas W. Means, deceased, over and beyond the

amount of the receipt of William Means for $136,035.75, mentioned in said bill, and without prejudice to any issues not joined and found against them in this suit."

For the reasons already stated, we think there was no defect of parties for the principal objects of the bill. And clearly, at that late stage of the case no objection of the kind having been previously taken, the defendants were not entitled to have the complainants turned out, if they were entitled to some part of the relief sought, even if the suit were so constituted that all the purposes of a bill of wider scope could not be accomplished.

McGahan *v.* Bank, 156 U. S. 218.
Society of Shakers *v.* Watson, 15 C. C. A. 632.

The court below must have thought that the bill was sufficient for the purposes of deciding that the advances made to William Means constituted a debt to the estate, for it entered a decree, which was expressly made final on that subject. The court declined to decide whether the receipt in question was valid or not, leaving that as one which might be tested on the final settlement. But the bill alleges the title of William Means to the legacy, and, in effect, the fraudulent procurement of the receipt from him without payment, and with knowledge of the complainants' rights under their assignment from the legatee. The pleadings were understood to involve the validity of the receipt, while the parties were taking the testimony. We cannot doubt that this question was fairly open for decision, and we conclude that the proper parties were before the court for deciding, as well the question of the existence of the claim as a debt, as also the question whether the receipt was a valid recognition of it and a release thereof.

Counsel for the administrators claim that if William Means owed this debt, as one which survived the testator's death, it was and is proper matter of set-off against his legacy, and we think this claim well founded; and the proposition has, in this case, the support of an additional equity arising from the insolvency of the legatee.

2 Woerner's Law of Administrators, sec. 564.
Waterman on Set-off, secs. 189, 190.
Courtenay *v.* Williams, 3 Hare, 539.
Hodgson *v.* Fox, L. R., 9 Ch. Div. 673.
Blackler *v.* Boott, 114 Mass. 24.
Brown's Administrators *v.* Mattingly, 91 Ky. 275.

Upon the merits, the fundamental question is that which relates to the construction of the will of Thomas W. Means, the 4th and 5th paragraphs of which are set out in the preceding statements of facts. Much acute analysis and criticism has been
775 bestowed by counsel on both sides upon its interpretation, and various canons of construction invoked. But we think the intention of the testator is so clearly indicated as scarcely to require the aid of more than the primary rule, that when the dominating purpose is clearly seen, the language of the will is to be construed, if possible, in such a way as to give it effect. This is called

the "poler star" in discovering the intention. By the 4th paragraph, the testator devises and bequeaths all his personal property to his four living children, and the son of his deceased daughter, share and share alike. Then, by the 5th, after reciting that he had already made advances to the legatees, which had been charged upon his books, he goes on to say that he desires the equal division he made in the 4th paragraph, "to be a provision for them respectively, in addition to the advances," already made or might thereafter be made, and that in the division and distribution of his estate, the advances which he had made, whether before or after the making of his will, to any of his children, should "be treated not as advancements, but as gifts, not in any manner to be accounted for by my said children or grandson, or any of them." The language could hardly have been made plainer to indicate that the leading purpose of the testator was, that the property which he should leave at his death, irrespective of what he might have advanced to them during his life, should be divided among the five persons named. What they should have received from him, by way of loan, no longer was to be treated as such, but was to be forgiven. He uses the word "advances" in the sense of "furnishing," "supplying," in advance of the final distribution of his will. It is absurd to suppose that he used the word as equivalent to the technical word "advancements," for in the face of the disposition to be made of his property at his death, he must have known that, if in the meantime, he should bestow property upon them, whether by way of gift or loan, it would not be an "advancement," as that word is used in legal phraseology. In the nature of things, it was not possible for him to have intended by "advances" the same thing as "advancements," for that involves an intention at the time of supplying the money, that it shall be such. Besides, he uses that term indiscriminately to apply to what he had given and charged to his children before the making of the will, as to what he might thereafter charge them. The legacies of the equal provision were to be "in addition" to such advances, and how could the testator be supposed to have used the word "advances" in its technical sense, which involves a satisfaction or diminution of the legacy *pro tanto*, when he expressly declared that the legacies should be in addition to them? The testator intended that they should not be eaten away by what he should be moved to do for his children during his life. The will becomes operative upon the death of the testator. What this will then meant was this, whatever the testator has helped his legatees to before this time, when distribution has finally come, though then a debt, is now forgiven. It "is not in any manner to be accounted for."

The equal distribution now to be made of what remains is
776 "in addition to said advances." For the lack of a more suitable word, we have frequently used this word in this opinion to express a similar meaning to that for which the testator employed it.

We are not prepared to say that under no circumstances could a debt from a legatee to the testator be created as an obligation independent of the absolution accorded by the will. Indeed, we think

otherwise. But we think also, that having regard to the manifest purpose of the testator when this will was made, to hold a free hand to help his children during his life as their necessities might require and then at the end to divide what remained of his property equally among them, the court ought to require clear proof of some distinct purpose on the part of the testator during the transactions when he furnished the helping means which is supposed to have created the debt, to put that debt outside of the pale of the forgiveness which he had written in his will; and it must have been his purpose and not that of some other. Even an expectation on the part of the legatee that the moneys paid for his benefit would in the end come out of his share of the estate would not change the situation unless the testator himself had a corresponding intent. He was the master of his fortune, and if he did not lend his money with the intent that if not repaid in his lifetime it should be repaid to his executors, then it would fall under the provisions of this will. There is not to be found in this record any such clear proof of the purpose of the testator to establish by the furnishing of the financial help, which he did, to his son, to establish an independent obligation on the son's part which if not paid during his life, should not be condoned by the provision in his will. At the time when he sent John to Cincinnati to aid William in his distress, the substance of all he said according to John's account, was to go and do for William what he thought best. John at that time held a power of attorney from his father, some time previously given:

* * * "to receive money, sign checks, notes, drafts and bills of exchange, to indorse notes, checks, drafts and bills of exchange payable to me or my order, to buy, sell and transfer notes, bonds, stocks, bills of exchange, drafts and checks, hereby allowing, ratifying and confirming whatever said John Means, attorney-in-fact for me and in my name, may do by virtue of this authority."

So far as appears, this and the direction from his father to do what he thought best was all the authority which John had when he went to Cincinnati and paid off William's liabilities to the bank, amounting to over $125,000, a sum almost as large as the amount covered by the receipt in question. It does, indeed, appear that by the father's acquiescence upon the suggestion of John who had the handling of his father's books, the account of these transactions was entered in a distinct place in these books and they were kept separate from the former accounts with William. But there is not much, if anything, in all this, or in anything else disclosed by the testimony, to prove that Thomas W. Means had a purpose to banish William Means from his favor or isolate him from the benefits of the plan of distribution of his
777 property after death which had become the settled purpose of his life. It was immaterial to that purpose in what book or how the account was kept. Whenever and however kept, the charge would fall under the provision of exclusion by the will in the end, and the details of the book-keeping he may well be deemed to have left to John, who had all such matters in charge. He had himself become blind and incapable of supervising his books in

person, and as he confided in John there was no reason for his going over them with the help of others, even if we assume that there was something on their face which disclosed this extraordinary purpose, which indeed we think is contrary to the fact. John's attention when he testified in the case was repeatedly drawn to his interview with his father about helping William and the mode of keeping the books, but he continued to say that substantially all his father said was to do as he, John, thought best in respect to both those matters. In reply to this question of his counsel, "State what, if anything, you said to your father with reference to taking a note from William Means for the amounts that he obtained after the failure of the bank in preference to a receipt," he said, "I gave as a reason to him that a receipt or charge on his books, simply, would not have the same effect in law that a note showing indebtedness to him would; that my understanding of his will as he had made it, as he understood it, that it was better to take note than have an account or receipt—to take a note showing evidence of indebtedness and the collaterals received or redeemed from the bank on sale to be applied as credit on the note, keeping it as an indebtedness, in the shape to indicate and show an indebtedness." To the further question, "State what answer, if any, he made?" he replied, "He told me to do as I thought was the best way to do—to do as I thought best." As the father undoubtedly intended to keep it as an indebtedness, John's statement to him imported nothing more than the mere question as to the best mode of doing the business "in the shape to indicate and show an indebtedness," and there is nothing in the very full detail of testimony given by John to show that on any occasion the idea of establishing an indebtedness beyond the scope of the will was ever broached to his father or that anything ever fell from him to show that such an idea had occurred to him. There was no suggestion by John to William at the time when he came to his relief, that anybody expected that the money which was being supplied to him by his father was to be put beyond the operation of the will, or would stand on any special footing in that regard. On the other hand, we think the moral probabilities are all against the appellees' contention. Thomas W. Means was a man of strong character and fixed adherence to his plans in life. He was also a man of strong paternal affections and had been accustomed to extend his assistance and support to all his children by employing his large means on every occasion of their need. It is incredible that he should have changed his attitude when William's calamities came upon him. The latter had gained considerable distinction in life, and no doubt he felt sensible of the credit
778 to the family which his son's attainments reflected. His was the character of man who would be likely to have taken pride in them. He did not then know what if any moral delinquency there was in William's transactions. He knew that his son was in financial distress and he came forward as was his wont, to help him out and re-establish him on solid ground. We are fully persuaded that we do him exact justice in refusing to believe that he then had a thought of inaugurating a new plan of dealing with

William's expectancy. And if he did not then have such purpose, there is nothing in the evidence which would justify the belief that he at any time afterwards formed one.

There is much testimony going to prove the vigorous and persistent efforts of others interested in the estate to impress upon those transactions the character which their interests inclined them to think would be just. We greatly doubt whether John Means had at any time any desire or intention to treat the advances made for William as excluding him from his share in his father's estate. It appears, and much stress is laid upon this by the appellees, that William gave his notes for the sums paid out for him and toward the last appended to them a sort of pledge of or charge upon his expectancy. The giving of the notes would not of itself alter the character of the advances. There is no doubt that Thomas W. Means was accustomed to enter his charges in his books as denoting an indebtedness from his children to himself, or that he intended to continue that practice and to hold them as debtors. The will signifies as much when read in connection with his books to which it refers, and if his advances had meant gifts the provision about them would have been superfluous, for a gift is neither an advancement nor a loan. If they were intended as loans for the time being, as no doubt they were, there was nothing out of the way in taking notes for them. But in the original and main transaction even this was not done. The subsequently taking a note was evidently an afterthought, and we think the probabilities are very strong that the taking of the note was not with any view to confirm, as against William, the idea that he was creating a debt to his father of any extraordinary character. There are many letters in evidence which passed between John and William during the time that these transactions were going forward. They are too many to transcribe here; we shall state the substance of them. On John's part they are full of manly tenderness and sympathy. He speaks in them of taking notes, but there is no intimation that they were to be taken for the purpose for which they are now sought to be used, and so of the pledges attached to some of the later notes. They signify on the contrary that the object was to put up a bulwark against the attacks of creditors, and to shield the collaterals which John had taken from William's creditors on paying them his debts, and probably also the legacy of William, for the father was old, and, as John's letters show, was not expected to survive for more than a short time. After John had returned home from Cincinnati on the occasion when he paid out $125,911.74, he wrote William stating the sum he had paid, and said: "I think you had better send me a note
779 at one day in father's favor for the amount," and that he had had a talk with a lawyer on his way up, who agreed with him that that was best, to close the matter up at present. This was the 16th of February. On the 20th of February, he wrote William again, saying:

"Herewith find forms which explain themselves. Please copy, sign and return to me at your earliest convenience. * * * I also think it best for you to have as herewith indicated, fearing

suits will be brought against you and other directors which may give you trouble as it now stands."

One of these forms was that of the note for $125,911.74. To this William on the 21st replied:

"Yours of the 20th received, and I send you by this mail my note to Thomas W. Means or order, for $125,911.74. Receipts for $700, $1,200 and $1,000, February 10th, 11th and 18th, respectively; and authority to dispose of securities, all as requested by you. I fully agree with your action in the premises, as the best preparation for the civil suits which are likely to follow."

On the 23d, John again wrote to William, saying:

"My Dear Will.: Yours of the 21st inst., note and authority to sell securities, came to hand last evening. Am sorry that my reference to father's sight caused you trouble. He keeps cheerful and contented, walks out every day if good weather, some one taking his hand as he walks. Have explained to him my action in your affairs, amounts paid, how obtained, the advantage of saving securities pledged from being sacrificed, etc. He understands all, but soon forgets details so that have to explain again when next I see him and always ends by telling me to do as I think best for you."

In this correspondence, John's purpose in taking the note and authority to dispose of the collaterals is somewhat (though not very) obscurely stated, but it is not difficult to understand what he meant or how William understood it.

It is contended that this was a dishonest and illegal purpose, and that William should be precluded from setting up the invalidity of the notes. But the suggestion of taking them came from John. The correspondence between him and William, above referred to, shows that William was in great trouble and distress; he was agitated by the sense of his financial disaster, his becoming discredited as a man, and the fear of impending criminal prosecution. He confessed to John his unfitness for doing business, and he therefore turned over to him the charge and management of affairs. This correspondence as well as the other evidence all concur in showing that William yielded to John's suggestions and followed them without question. John stood in the relation of a fiduciary toward his brother. In such circumstances it would be a strange perversion of the doctrine of estoppel to hold that William should be the party who is estopped. Such facts would indicate the propriety of holding the administrators to be estopped from setting up the products of John's unlawful proceedings, assuming they are such, as a bar to William's claim. The administrators do not represent any person who could have been defrauded, and it
780 does not appear how these administrators of Thomas W. Means can assert any rights which belong to creditors unless they are themselves such. We are convinced that the notes and instruments charging the legacy were intended to be operative only in case the creditors should proceed against the collaterals or

for the purpose of subjecting William's legacy to the payment of their debts.

It is contended on the part of the administrators that it is not competent to controvert, by parol testimony, the plain terms of a written instrument, and this is undoubtedly a well-settled rule; but it does not apply to an instrument which has been given with the intention of both the parties thereto that it should become operative only upon some condition.

2 Wharton on Evidence, sec. 927.
Burke *v.* Dulaney, 153 U. S. 228.

In the case cited, the rule was stated and applied in an opinion delivered by Mr. Justice Harlan, in which he cited and discussed a large number of authorities illustrating the subject.

Ware *v.* Allen, 128 U. S. 590.
Pym *v.* Campbell, 6 El. & Bl. 370, 373.
Davis *v.* Jones, 17 C. B. 625.
Wallace *v.* Littell, 11 C. B. (N. S.) 369.
Wilson *v.* Powers, 131 Mass. 539.
Pawling *v.* United States, 4 Cranch, 219.

Besides this, when we consider the relations of the parties, it could not be permitted that the administrators should avail themselves of instruments, procured by John Means for the professed purpose of benefiting William, as a means, by converting it to another purpose, of cutting him off from his legacy.

We cannot, therefore, hesitate in reaching the conclusion that there was no intention on the part of the testator, in making the advances to William on February 15, 1888, and subsequently, to create an obligation on William's part which would not be forgiven by his will. Whether John Means conceived such an idea, at a late stage in the transaction, we are not sure, and it is not necessary to decide. It is probable that William anticipated that some such fate might befall him. After his downfall, he seems to have been unsteady in his course, sometimes inclining strongly to his father's family, and seeming to be anxious to secure their affection and favor, and willing to do as they wished to that end. At other times he turned to consider the welfare of his own family, and his own obligations toward its members.

Having reached the conclusion that the debts incurred by William Means to his father were extinguished by the will, and that the administrators had no just foundation for claiming William's debts as a set-off against his legacy, it remains for us to consider whether what has been done between the administrators and William should be treated as a satisfaction of it. The defendants have exhibited extraordinary diligence in obtaining from William repeated
781 renunciation of his claims. Some days before the testator's death, they obtained one such, and then, upon the day of their appointment, they solemnly indorsed upon the instrument their acceptance of the same as administrators, notwithstanding he had in the meantime revoked it; and on later occasions they ob-

tained like concessions, culminating in the receipt and order of October 16, 1890, now in controversy. Such activity on the part of an administrator executing a will, in procuring the surrender of one, who, by its terms, is a legatee, excites suspicion that they were conscious of standing on dubious ground, and ill comports with the duties of one standing in the place of a trustee for all the parties in interest. It is a violation of his duty, when an executor becomes a partisan for one legatee and sacrifices the other. The law will not permit any unfairness on his part, or sanction a proceeding whereby the legatee is induced by his trustee to give up valuable rights without any, or a wholly inadequate consideration. Here there was no consideration for the abandonment of his legacy by William Means to the administrators. It is contended by the appellees that the collaterals given up were valuable, and that William could not retain them and repudiate his receipt. Nearly all of them had been realized upon during the father's life, and the proceeds credited to William. A small part of them only were left. The collaterals which they surrendered to him had become his own property, when the debts which they secured had been extinguished by the will. While the father was alive, he was a creditor of William in respect of the moneys loaned to him, and undoubtedly he had the right to enforce the collaterals and thereby satisfy or reduce William's debt; but the situation was changed at his death. Then the will came into effect, and the debt itself being discharged thereby, the purposes of the security ended by inevitable consequence. These collaterals had all the while remained in John's hands, and were obtained from him by one of the administrators, to turn over to William, whose receipt states that they were "received of E. C. Means (from John Means.)" These collaterals, the administrators claimed as property, which they held in pledge for the debt which they asserted in favor of the estate against William. William had lost all his property, and was in very straightened circumstances. Since his downfall, he has been broken in spirit and wavering in his purposes. He seems at times to have been impressed that the administrators had a moral, if not a legal, claim upon him, that he should yield up his legacy to the estate, and this claim was pressed and insisted upon by the administrators. That they had no such legal claim upon him, we have already determined. His brother and sisters all being in affluent circumstances, and his own family in needy circumstances, that he should have voluntarily given up the whole of this large sum, with no mistake in regard to what his legal rights were, it is difficult to believe. It amounted simply to a gift to the administrators for the benefit of the other legatees, whose only claim rested on the bounty of the testator. Courts of equity view such transactions with distrust,
782 and if the circumstances indicate that the trustee has dealt with the beneficiary unjustly, will not hesitate to set them aside. The absence of any adequate consideration in itself raises a presumption of unfairness, which the trustee is bound to repel. Equity will relieve the legatee in such transactions, where he has, under a misapprehension of his legal rights, surrendered to

the trustee valuable interests without any adequate consideration, especially where the situation is such that no harm will come to the interests of others. Such would be the case, where the claim relates to a fund which has not yet passed beyond control. These propositions are amply sustained by authority:

1 Story Eq. Jur. § 307, 308.
2 Pomeroy's Eq. Jur. § 948, 951, 955, 956, 958, 1088.
Taylor *v.* Taylor, 8 How. 183.
Comstock *v.* Herron, 6 U. S. App. 629, and the cases there cited.
Mills *v.* Druitt, 20 Beavan, 632.
In re Ashley's will, 1 Johns. V. C. 122.
Snow *v.* Booth, 2 K. & J. 132.
Standard Oil Co. *v.* Hawkins, 20 C. C. A. 468.

"It is not," says Mr. Justice Story, *uba supra*, "upon the feelings which a delicate and honorable man must experience, nor upon any notion of discretion, to permit a voluntary gift or other act of a man, whereby he strips himself of his property, that courts of equity have deemed themselves at liberty to interpose in cases of this sort." They "will not, therefore, arrest or set aside an act or contract, merely because a man of more honor would not have entered into it. There must be some relations between the parties which compels the one to make a full discovery to the other or to abstain from all selfish projects. But, when such a relation does exist, courts of equity, acting upon this superinduced ground, in aid of general morals, will not suffer one party, standing in a situation of which he can avail himself against the other, to derive advantage from that circumstance, for it is founded in a breach of confidence." It makes no difference that the other legatees would ultimately obtain the benefit of the wrong; however innocent of it they may be, it would come tainted to their hands. Even gifts between persons who stand in no confidential relation to each other, are watched with jealousy.

2 White & Tudor's Leading Cases in Eq., 582.
Cooke *v.* Lamotte, 15 Beav. 234.

Where the transfer is of a large sum, and constitutes the whole of the property of the party making it, himself having obligations to those in need to one standing in no need, it raises an almost insurmountable presumption that there has either been some untoward influence or gross misconception on the part of the party making it, of his rights and obligations.

It is possible that the administrators were actuated by a purpose to get William's share out of the way of creditors, thinking the other legatees were more justly entitled to it, but they do not
783 charge themselves with any such purpose, and we shall not impute it to them.

We are, therefore, of the opinion that the transactions which took place between the administrators and William Means, among them that of taking the receipt of October 16, 1890, ought not to be allowed to bar the enforcement of the payment of the legacy.

In view of the conclusions which we have reached in respect to the title of William Means to the legacy in question, it is not necessary for us to decide whether, as against the administrators, there is any sufficient proof of the existence of the agreement between William Means and the members of his family, which is said to have been made in February, 1890. The trust deed executed by him on December 26, 1891, conveyed his interest to the present complainants as trustees. As between William Means and the complainants, in the Greene county court of common pleas, there having been due service of the process upon him, the decree therein rendered and the trust deed were effective in transferring the title and estop him from denying that it was in fact transferred. It is no concern of the administrators whether they are required to pay the legacy to the legatee, or to his assignee, nor can they require that the rights of William Means' creditors should be litigated in this suit. They are not parties, and that subject could only be considered in independent litigation. Akin to that matter, is the question presented in regard to the complainants' trust being, in part, for the benefit of the grantor in the deed. Whether, as to creditors, that part of the trust would be obnoxious to their attack, we do not, for the reasons above stated, think it is necessary or proper to decide.

The result is that the decree of the court below must be reversed, and the cause remanded, with directions to enter a decree for the complainants setting aside the receipt of October 16, 1890, and directing an account to be taken for the purpose of ascertaining the amount due in respect of the legacy of William Means, and that thereupon, the complainants are entitled to recover the same.

The complainants will recover costs in this court, and in the court below, to be paid by the administrators from the funds of the estate.

784 And afterwards, on the same day, to wit, on February 8th, 1897, a decree was entered in said cause in said court which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

B. R. COWEN *et al.*, Trustees,
vs.
THOMAS M. ADAMS *et al.*, Ex., etc. } # 367.

Appeal from the circuit court of the United States for the district of Kentucky.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Kentucky and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, reversed, and the cause is remanded to the court whence it came, with directions to enter a decree for the complainants setting aside the receipt of October 16, 1890, and directing an account to be taken for the purpose of ascertaining the amount due in respect of the legacy of William Means

and that thereupon the complainants are entitled to recover the same. Costs of this court and the court below to be paid by the administrators from the funds of the estate.

And afterwards, to -it, on March 9th, 1897, a petition for rehearing was filed in said cause in said court.

785 And afterwards, to wit, on May 4th, 1897, an opinion was filed in said cause in said court; which opinion reads and is as follows:

Opinion.

786 Before Lurton, circuit judge, and Hammond and Severens, district judges.

SEVERENS, district judge, delivered the opinion of the court:

The defendants, Thomas M. Adams and E. C. Means, as administrators, with the will annexed, have filed a petition for a rehearing of this case upon the following grounds:

"First. Because the settlement of October 16, 1890, is decreed to be set aside upon grounds not alleged in the bill, and which were therefore not discussed by counsel for the petitioners at the argument.

"Second. Because upon the question whether the notes of William Means are forgiven by the fifth clause of the will there is a clear distinction, overlooked by the court, between the note of November 22, 1888, for $45,000, and the other notes covered by the settlement.

"Third. The petitioners believe and are so advised by their counsel that a consideration of arguments which, for the reason aforesaid, were not presented at the hearing, will lead this honorable court to a decision in their favor."

In the statement of the grounds and arguments appended to the petition and in support thereof, counsel, in addition to the suggestion of reasons relevant to the particular ground first stated, on which a rehearing is asked, go into a discussion of other matters involved in the merits of the case which have already been considered by the court and passed upon in the opinion hitherto
787 filed. We do not deem it necessary to reconsider those matters, including the supposed distinction between the note of November 22, 1888, for $45,000, and the other notes covered by the settlement; and shall therefore attend only to the special matter alleged in the petition, which is substantially this: Whether the conclusion which we reached ought to stand, in view of the allegations contained in the pleadings. The ground of complaint is, that the settlement of October 16, 1890, between the administrators and William Means is alleged in the bill to have been made upon a fraudulent combination with William Means for the purpose of defeating the rights of the plaintiffs, and not that it was a fraud upon him as the court appears to have found it to be, and upon which latter view it is said the conclusion of the court rests; and there-

upon it is contended that the decision is inconsistent with the allegations of the bill. We do not think this suggestion of inconsistency rests upon any solid ground. The material facts upon which the complainants' case was founded, and upon the proof of which their right to relief was made out, were these: The making of the will, the death of the testator, the assignment of William Means' legacy to the complainants, and the giving of the receipt to the administrators by William Means without payment of the legacy, either to him or his assignees. These facts the bill avers. All the rest was defensive, and the burden of allegation and proof that the legacy had been paid or validly released was upon the defendants. This burden was assumed and the defensive allegations pleaded in the answer of the administrators. It is true, as stated, that the complainants alleged in their bill that the defendants entered into a fraudulent combination with William Means by which they attempted to secure his receipt for his legacy, in fraud of complainants, and that in pursuance of said combination William Means executed the receipt; but the defendants denied these allegations in their answer and averred: "That the said receipt was not executed or delivered in whole or in part by reason or in pursuance of the pretended fraudulent agreement or combination in the bill set up, and that no such combination was ever made, and they deny each and every allegation in the bill in respect thereof." And throughout they have strenuously maintained this averment. In the briefs filed and at the argument, counsel maintained that there was no such combination. This they probably felt bound to do in order to resist the effect of the alleged assignment of his legacy by William Means to his family, and the decree of the Greene county court of common pleas. This court did not find that there was any fraudulent combination between the administrators and William Means in making the settlement of October 16, 1890, to defeat the rights of the beneficiaries under the complainants' trust, and to that extent practically sustained the defendants' contention; but upon other grounds held that the complainants were entitled to recover the amount of the legacy. The grounds upon which the court proceeded were strenuously contested, and in the printed and oral arguments were fully and elaborately discussed. What the
788 defendants now contend for is that the complainants by an allegation in the bill which they deny the truth of, and which allegation is unproved, ought to be precluded from recovery upon other substantive and sufficient allegations of fact which the court has found to be established. We think it clear that this proposition cannot be maintained, and that as no other new matter is submitted, the petition should be denied.

789 And on the same day, to wit, on May 4th, 1897, a decree overruling said petition for rehearing was filed in said cause in said court, which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

B. R. COWEN *et al.*, Trustees,
vs.
THOMAS M. ADAMS *et al.*, Ex., etc. } # 367.

Appeal from t[illegible]cuit court of the United States for the district of Kentucky.

Petition for rehearing is hereby denied.

790 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing is a true and correct copy of order of hearing and submission, the decrees and opinions hereto attached, in the case of Benjamin R. Cowen *et al.*, trustees, etc., *vs.* Thomas M. Adams & E. C. Means, executors of the last will and testament of Thomas W. Means, deceased, No. 367, October term, 1896, as the same remains upon the files and records of said United States circuit court of appeals for the sixth circuit and of the whole thereof.

Seal United States Circuit Court of Appeals, Sixth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the sixth circuit, at the city of Cincinnati, Ohio, this twenty-first day of May, 1897.

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

791 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the sixth circuit, Greeting:

Being informed that there is now pending before you a suit in which Benjamin R. Cowen, Evan F. Williams, and A. S. Frazer, trustees, are appellants and Thomas M. Adams and E. C. Means, administrators, with the will annexed, of the estate of Thomas W. Means, deceased, and John Means are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the district of Kentucky, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme
792 Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of October, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

I return the foregoing writ pursuant to a stipulation of counsel filed in the office of the clerk of the United States circuit court of appeals for the sixth circuit this 3rd day of December, 1897, which is in the following words, to wit:

"United States Circuit Court of Appeals for the Sixth Circuit.

BENJAMIN R. COWEN, EVAN F. WILLIAMS, and A. S. FRAZER, Trustees, Appellants, *vs.* THOMAS M. ADAMS and E. C. MEANS, Administrators, with the Will Annexed, of the Estate of Thomas W. Means, Deceased.	#367.	Stipulation.

It is hereby stipulated between the parties that the certified transcript of the proceedings in this court, together with the printed copy of the record in this court of the proceedings in the circuit court, both of which were filed in the Supreme Court of the United States in connection with the application for a writ of certiorari, may be taken as a return to the writ of certiorari that has been issued by the Supreme Court of the United States.

It is further stipulated that said printed record now on file in Supreme Court shall be amended by inserting at the proper place, at page 461 thereof, questions 35 and 36 and answers thereto, as follows, which were inadvertently omitted in printing said record:

Q. 35. State what was said by you on that trip up the river, if anything, in any conversation between you and Evan F. Williams, with reference to the purpose of taking the $125,000 note.

A. I told him I expected to take William's note for the amount paid to protect my father's interest for the payment of this money—to protect him or his estate.

Q. 36. Mr. Williams has testified that you said you proposed to take that note for the purpose of protecting William Means' interest in the estate against creditors, or substantially that. What, if anything, did you say in that respect?

A. I said it was to protect my father's interest or to protect his estate. I did not tell him that it was to protect William Means. I did not tell him; don't think he so understood me; did not think he understood it so then, and I do not think now that he understood it so.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

LAWRENCE MAXWELL,
For Administrators.
J. J. GLIDDEN,
For Complainants."

Done at Cincinnati, Ohio, this 3rd day of December, 1897.

FRANK O. LOVELAND,
Clerk U. S. Circuit Court of Appeals for the Sixth Circuit.

793 [Endorsed:] Case No 16,594. Supreme Court of the United States. No. 381. October term, 1897. Thomas M. Adams & E. C. Means, adm'rs, &c., *vs.* Benjamin R. Cowen *et al.*, trustees. Writ of certiorari and return. Office Supreme Court U. S. Filed Dec. 6, 1897. James H. McKenney, clerk.

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Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 845 Sup. 113.

THOMAS M. ADAMS and E. C. MEANS, Executors with the will annexed of the estate of THOMAS W. MEANS, deceased, *Appellants*,

vs.

BENJAMIN R. COWEN, EVAN F. WILLIAMS and A. S. FRAZER, Trustees, *Appellees*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Printed by JAMES BARCLAY, 108-118 Canal St., Strobridge Building, Cincinnati, O.

Supreme Court of the United States.

OCTOBER TERM, 1896.

No.

THOMAS M. ADAMS and E. C. MEANS, Executors with the will annexed of the estate of THOMAS W. MEANS, deceased, *Appellants*,

vs.

BENJAMIN R. COWEN, EVAN F. WILLIAMS and A. S. FRAZER, Trustees, *Appellees.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Supreme Court of the United States:

The Appellants respectfully pray for a writ of certiorari to review the decree of the United States Circuit Court of Appeals for the Sixth District, and annex hereto a statement of the case and of their grounds for the petition. They file printed copies of the record in the Circuit Court of Appeals, and a certified transcript of the proceedings in that court.

LAWRENCE MAXWELL, JR.
Of Counsel for the Petitioners.

JULIUS L. ANDERSON,
JOHN F. HAGER,
Of Counsel.

STATEMENT OF THE CASE.

Thomas W. Means, a resident of Kentucky, died testate June 8, 1890, leaving four children, John Means, William Means, Margaret Means and Mary A. Adams, and one grandson, the only child of a deceased daughter. He devised his estate equally between these four children and his grandson. The controversy arises upon the fifth clause of his will, to wit [Record, 48]:

"Item 5. I have made advances to my said children, which are charged to them respectively on my books, and I may make further advances to them respectively, or to some of them, and to my said grandson, which may be charged on my books to their respective accounts; I desire the equal provision herein made for said children, and the provision for said grandson to be a provision for them respectively, in addition to said advances made, and that may hereafter be made, and that in the division, distribution and settlement of my said estate, said advances made, and that may hereafter be made, be treated not as advancements but as gifts, not in any manner to be accounted for by my said children and grandson, or the issue of any of them."

The advances referred to in the foregoing clause were advancements of over $100,000, which the testator had already made to each of his children, including William. Subsequently, in 1884, he made further advancements so that each child, including William, had received $180,000, and with that the testator closed his advancement accounts on his books. He was then over seventy.

Subsequently, commencing in 1888, and within a period of sixteen months of the testator's death, one of his children, William Means, *borrowed* from him the sum of $280,311.42, for which he executed promissory notes, payable with interest to the order of the father. Some of the notes were secured by collaterals and others stated on their face that they were to be charged against and deducted from the maker's share as legatee of his father. William Means made payments on these notes

so as to reduce the balance due upon them to $136,035.75. After his father's death he made a settlement with the administrators (the appellants), giving the following receipt:

"Ashland, Ky., October 16, 1890.

Received of Thomas M. Adams and E. C. Means, administrators with the will annexed of the estate of Thomas W. Means, deceased, the sum of one hundred and thirty-six thousand and thirty-five and 75-100 dollars, being a part of my distributable share as legatee under said will applied by them as ordered by me upon the following notes and claims owed by me to the estate of said decedent, and payable to his order, viz:

[Here follows description of ten notes, with balance due on each, aggregating $136,035.75.]

This receipt is given in pursuance of settlement made October 16, 1890.

WILLIAM MEANS.

Attest: John F. Hager.

A. E. Lampton."

The present suit is brought by persons claiming to be assignees of William Means, to recover his full fifth share in his father's estate, in disregard of the foregoing settlement, and without deduction of the amount due upon his notes. The Circuit Court dismissed the bill, holding that the balance due on the notes were proper off-sets against William Means' share of his father's estate. The Court of Appeals, reversing the decree of the Circuit Court, held that the plaintiffs, as assignees of William Means, are entitled to recover his full fifth share without deduction of his debt of $136,035.75. In other words, they give to William Means' assignees a double portion of the estate.

I.

The Court of Appeals admit that the money represented by William Means' notes was not a gift or advancement, but that it was a loan or *debt* which might have been enforced against

him by his father during his lifetime, but that the *loan* was forgiven and discharged under the fifth clause of the will.

We submit that the fifth clause of the will does not cancel *debts* due from children to the testator, but that it relates simply to *advancements*.

This is conformable to the notions of justice, which from the earliest times have led courts of chancery to bend their energies (whether in interpreting wills or administering estates) so as to secure equality among children. The same public policy is disclosed in the statutes which everywhere require children to account for advanced portions. It is true that the testator meant to give his children the benefit of certain advances, but his dominating purpose was equality, and that provision was not meant to work a double or triple portion.

Under the Court of Appeals' construction of the fifth clause of the will, William Means gets a *double portion;* and if his father had died before the original advances of $280,311.42 had been reduced by payments thereon to $136,035.75, he would have gotten his equal share as legatee, and $280,000 in addition. If the $280,000 had been paid to him as a *gift* or *advancement*, that would be a proper result. But the question is whether the testator meant by the fifth clause to convert into a gift what he had advanced to a child, not by way of gift but by way of *loan* upon the distinct understanding that it should be repaid to him.

We are not confronted with any question of fact under this head, because the Circuit Court of Appeals find that William Means' notes evidenced *debts*, and not advancements.

To some of the notes were attached agreements in the following form [Record, 212]:

"The above is for money loaned to me by Thomas W. Means, on account of my indebtedness as executor and trustee of the estate of A. Labrot, deceased, and it is agreed as part of the transaction by which I have procured a loan of $45,000 upon the foregoing note, that the amount thereof and all interest shall

be paid from my interest as devisee or distributee of the estate of Thomas W. Means.

WILLIAM MEANS."

The Court of Appeals ignores these express charges on the legacy on grounds not mentioned in the bill. The only evidence on the subject is that of the attorney who prepared and advised the contract, viz:

"We advised Mr. John Means to use this form of note with the writing attached, *that it might clearly and beyond question, under any construction of the fifth clause of the will*, appear that the money so furnished his brother should be a loan, and in no sense an advancement under the terms of that will." (R. 727, 728.)

It is well settled that a legatee's receipt is evidence of the character of the advance, and to show that it was made on account of the legacy. Cowles vs. Cowles, 56 Conn. 240.

If this court is of opinion that William Means, under the fifth clause of the will was not entitled to deduct from his legacy these *debts* due from him to his father, especially in view of the agreements under which the loans were obtained, the judgment of the Court of Appeals must be reversed, because it is conceded that the administrators are entitled to set off debts against the legacy.

II.

But assuming that William Means' debts were not (as an original proposition) set-offs against his legacy, the question remains whether the settlement made by him October 16, 1890, with the administrators, can be set aside. The bill seeks to set this settlement aside upon the ground that the plaintiffs were prior assignees of William Means' interest in his father's estate, and that the settlement between the administrators and William Means was made in collusion with William Means in fraud of

the plaintiff's rights as the real owners of the legacy. The Circuit Court of Appeals do not find that William Means had made an assignment of his legacy to the plaintiff prior to his settlement of October 16, 1890. They set the settlement aside on the ground that the administrators were trustees of William Means and not competent to accept from him a settlement by which he relinquished an interest in the estate to which as matter of law (assuming that his *debt* was not deductible from his legacy) he was entitled.

No such ground for setting aside the settlement is alleged in the bill. If it were alleged, the decision of the Court of Appeals ignores the proposition that it is competent for persons to adjust a disputed claim and that it is no ground for setting aside such a settlement that the claim settled is not well founded in point of fact.

In Callisher vs. Bischoffsheim, L. R. 5 Q. B. 449, which is the leading English case, the defendant being sued on a promise made in consideration of the compromise of a claim, set up that at the time of the compromise agreement, nothing was in fact due to the plaintiff. But the court sustained a demurrer to the plea.

Blackburn, J., said:

"If we are to infer that the plaintiff believed that some money was due to him, his claim was honest, and the compromise of that claim would be binding, and would form a good consideration, although the plaintiff, if he had prosecuted his original claim, would have been defeated."

Cockburn, C. J., said:

"If the defendant's contention were adopted, it would result that in no case of a doubtful claim could a compromise be enforced. Every day a compromise is effected on the ground that the party making it has a chance of succeeding in it, and if he bona fide believes he has a fair chance of success, he has a reasonable ground for suing, and his forbearance to sue will constitute a good consideration. * * *

"It would be another matter if a person made a claim which he knew to be unfounded, and, by a compromise, derived an advantage under it; in that case his conduct would be fraudulent."

In Stewart vs. Stewart (6 Cl. & F. 911, 966), Lord Chancellor Cottenham quotes with approval the following words of Lord Hardwicke, approving the doctrine of Lord Macclesfield:

"An agreement entered into upon a supposition of a right, or of a doubtful right, though it after comes out that the right was on the other side, shall be binding, and the right shall not prevail against the agreement of the parties; for the right must always be on the one side or the other, and therefore the compromise of a doubtful right is a sufficient foundation for an agreement."

"If the solemn compromise of the parties is made to depend on the question whether the parties have so settled the dispute as the law would have done, then it may be truly said that a compromise is an unavailing, idle act, which questions even the power of the parties to bind themselves." Fisher vs. May, 2 Bibb, 448.

Union Bank of Georgetown vs. Geary, 5 Pet. 99, involved an agreement under which the endorser of a note had waived all defence and permitted a judgment to go against her upon the promise of the plaintiff that it would issue an execution immediately against the maker, who was represented to have property sufficient to satisfy the judgment. The plaintiff having failed to keep its agreement by issuing execution, sought to escape from the consequences of its breach by insisting that the indorser had in fact no good defence and that her agreement to waive defence and suffer judgment was therefore no consideration. But this court held that the consideration was sufficient, even though one of its own later decisions showed that the defence of the endorser (which alleged the insufficiency of a demand made on the fourth instead of the third day of grace) could not have prevailed. Mr. Justice Thompson said:

"It is unnecessary to examine whether this defence would have been available or not. The validity of the contract did not depend upon that question. It is enough that the bank considered it a doubtful question, and that they supposed they were gaining some benefit by foreclosing all enquiry on the

subject. . . . To permit a subsequent judicial decision on this point in their favor, as having a retrospective effect, so as to annul a settlement or agreement made by them under a different state of things, would be sanctioning *a most mischievous principle.*"

But it is just this "most mischievous principle" that the Court of Appeals recognizes when it permits William Means' assigns to repudiate the settlement of October 16th, because that court if of opinion that the claim of the administrators, which he then settled, could not have prevailed if contested.

The settlement was made by William Means under the advice of competent counsel, and after protracted negotiations with the administrators.

We respectfully submit:

1. That William Means is not entitled to a double portion, but that his *debt* of $136,035.75 to his father's estate should be deducted from his legacy.

2. That the question whether he was entitled to such a deduction was settled by an agreement between the administrators and himself, acting under the advice of counsel, and that no ground was presented by the bill and found by the court for setting the settlement aside.

LAWRENCE MAXWELL, JR.
Of Counsel.

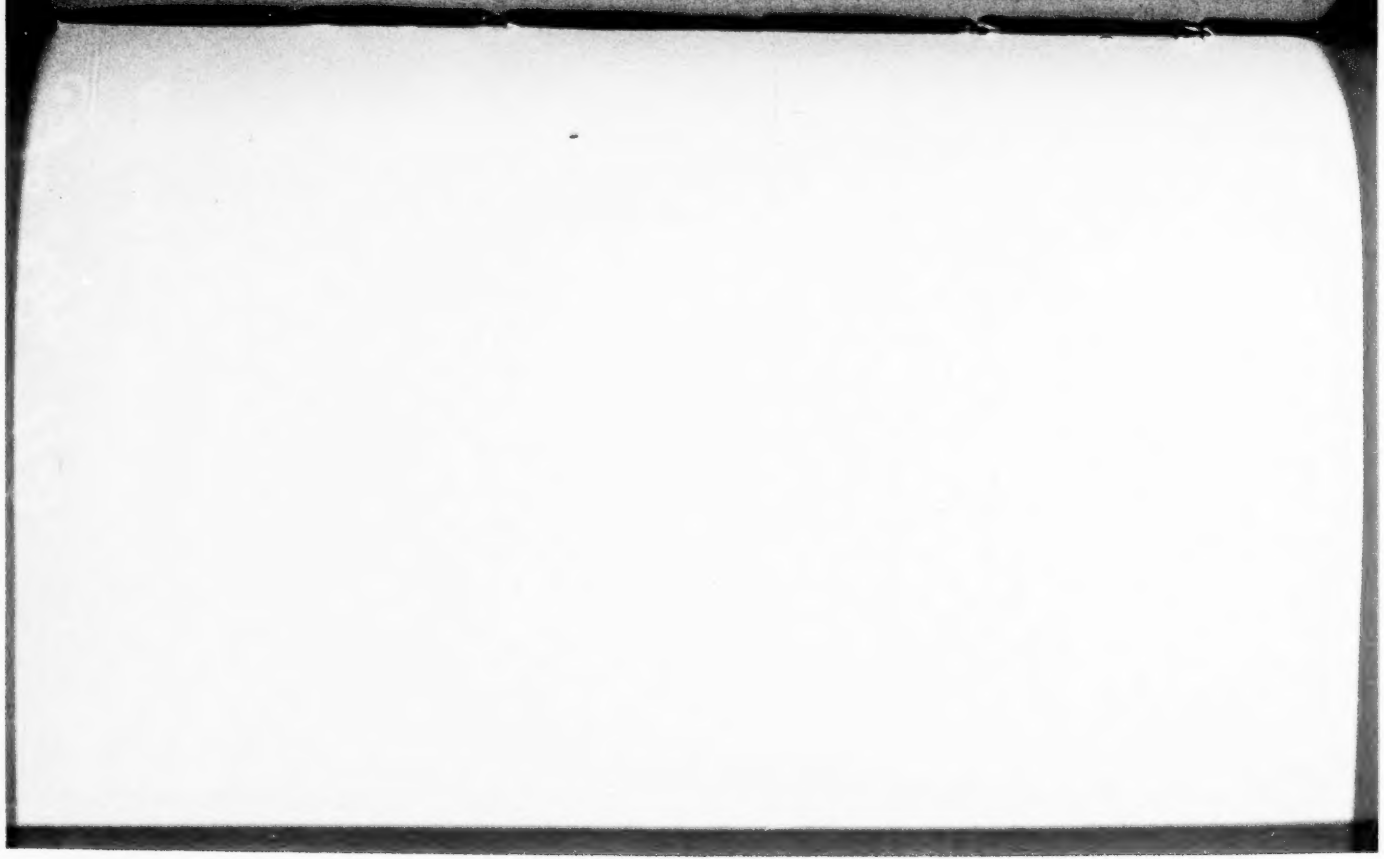
In the opinion denying the rehearing, the court of Appeals says:

"This court did not find that there was any fraudulent combination between the administrators and William Means in making the settlement of October 16, 1890, to defeat the rights of the beneficiaries under the complainants' trust, and to that extent practically sustained the defendants' contention; but upon other grounds held that the complainants were entitled to recover the amount of the legacy."

In other words, the court ignores the bill as framed, and sustains it simply as a bill to recover a legacy. This was clearly error.

1. Because William Means' legacy had not been assigned to the plaintiffs prior to the filing of their bill.

2. The will provides that no final settlement can in any event be required before three years after the testator's decease. The bill was filed before that time. In In re Spencer (16 R. I. 25, 31) it was held that where a testator had declared that his executors "should have five years in which to settle his estate," a legatee could not maintain a suit for his legacy within that time.



No. 381. 113.

FILED
DEC 11
JAMES H. McKE

Motion Papers.

Supreme Court
Filed Dec. 11, 1897.
of the United States.

OCTOBER TERM, 1897.

No. 381.

E. C. Means, et al., Admrs.
of the Estate of
Thos. W. Means,
vs.
Benjamin R. Cowen, et al.,
Trustees, etc.

MOTION TO ADVANCE.

JUDSON HARMON
AND
J. J. GLIDDEN,
Counsel for Trustees.

DECEMBER, 1897.

Supreme Court of the United States.

E. C. Means et al, Adm'rs, etc.,
of Thomas W. Means,
vs.
Benj. R. Cowen, et al.,
Trustees, etc.

No. 381.

PETITION TO ADVANCE AND GROUNDS THEREOF.

This action is brought to this Court by *certiorari* from the unanimous judgment of the Circuit Court of Appeals, Sixth Circuit.

The action is by Trustees of an express trust against the Administrators of the estate of Thos. W. Means.

The trust was created by a transfer of the interest of Wm. Means, as one of the residuary devisees under the will of Thos. W. Means, to Trustees, to secure thereby to the family of Wm. Means, otherwise destitute, means of support and maintenance.

The main question involved in the case is the determination of the amount of that interest, and that determination depends upon the construction of the will.

All the debts of the testator have been paid.

The execution of the trust, and the settlement of the estate of Thomas W. Means, are both necessarily deferred until the final determination of this litigation.

The litigation has been pending for six years. The needs of the beneficiaries are apparent from the record, by their having been compelled to avail themselves of the beneficent provisions of the acts of Congress in aid of indigent litigants.

It seems to us, we say with the utmost deference, that, in granting the writ of *certiorari*, the Court saw fit, for some reason, to make an exception to the rule it has frequently announced. We submit, therefore, that this motion should be granted, in order that the long litigation may be settled speedily and the wife and daughters of William Means given the relief awarded them below, if this honorable Court shall decide in their favor. Delay to them would be almost as bad as denial.

Notice of this motion has been duly served on opposing counsel, and proof of service filed with the clerk.

Opposing counsel authorize us to state that they concur in this application.

JUDSON HARMON
AND
J. J. GLIDDEN,
Of Counsel for Trustees.

CINCINNATI, Dec. 9, 1897.

No. Pro. Pet.

Brief of Maxwell for Petitioner

Office Supreme Court U. S.
FILED
MAY 24 1897
JAMES H. MCKENNEY
CLERK

Filed May 24, 1897.

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 815

THOMAS M. ADAMS and E. C. MEANS, Executors with the will annexed of the estate of THOMAS W. MEANS, deceased,

Appellants,

vs.

BENJAMIN R. COWEN, EVAN F. WILLIAMS and A. S. FRAZER, Trustees, *Appellees.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Printed by JAMES BARCLAY, 108-118 Canal St., Strobridge Building, Cincinnati, O.

Supreme Court of the United States.

OCTOBER TERM, 1896.

No.

THOMAS M. ADAMS and E. C. MEANS, Executors with the will annexed of the estate of THOMAS W. MEANS, deceased,
Appellants,

vs.

BENJAMIN R. COWEN, EVAN F. WILLIAMS and A. S. FRAZER, Trustees, *Appellees*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Supreme Court of the United States:

The Appellants respectfully pray for a writ of certiorari to review the decree of the United States Circuit Court of Appeals for the Sixth District, and annex hereto a statement of the case and of their grounds for the petition. They file printed copies of the record in the Circuit Court of Appeals, and a certified transcript of the proceedings in that court.

LAWRENCE MAXWELL, JR.
Of Counsel for the Petitioners.

JULIUS L. ANDERSON,
JOHN F. HAGER,
Of Counsel.

STATEMENT OF THE CASE.

Thomas W. Means, a resident of Kentucky, died testate June 8, 1890, leaving four children, John Means, William Means, Margaret Means and Mary A. Adams, and one grandson, the only child of a deceased daughter. He devised his estate equally between these four children and his grandson. The controversy arises upon the fifth clause of his will, to wit [Record, 48]:

"Item 5. I have made advances to my said children, which are charged to them respectively on my books, and I may make further advances to them respectively, or to some of them, and to my said grandson, which may be charged on my books to their respective accounts; I desire the equal provision herein made for said children, and the provision for said grandson to be a provision for them respectively, in addition to said advances made, and that may hereafter be made, and that in the division, distribution and settlement of my said estate, said advances made, and that may hereafter be made, be treated not as advancements but as gifts, not in any manner to be accounted for by my said children and grandson, or the issue of any of them."

The advances referred to in the foregoing clause were advancements of over $100,000, which the testator had already made to each of his children, including William. Subsequently, in 1884, he made further advancements so that each child, including William, had received $180,000, and with that the testator closed his advancement accounts on his books. He was then over seventy.

Subsequently, commencing in 1888, and within a period of sixteen months of the testator's death, one of his children, William Means, *borrowed* from him the sum of $280,311.42, for which he executed promissory notes, payable with interest to the order of the father. Some of the notes were secured by collaterals and others stated on their face that they were to be charged against and deducted from the maker's share as legatee of his father. William Means made payments on these notes

so as to reduce the balance due upon them to $136,035.75. After his father's death he made a settlement with the administrators (the appellants), giving the following receipt:

"Ashland, Ky., October 16, 1890.

Received of Thomas M. Adams and E. C. Means, administrators with the will annexed of the estate of Thomas W. Means, deceased, the sum of one hundred and thirty-six thousand and thirty-five and 75-100 dollars, being a part of my distributable share as legatee under said will applied by them as ordered by me upon the following notes and claims owed by me to the estate of said decedent, and payable to his order, viz:

[Here follows description of ten notes, with balance due on each, aggregating $136,035.75.]

This receipt is given in pursuance of settlement made October 16, 1890.

WILLIAM MEANS.

Attest: John F. Hager.
A. E. Lampton."

The present suit is brought by persons claiming to be assignees of William Means, to recover his full fifth share in his father's estate, in disregard of the foregoing settlement, and without deduction of the amount due upon his notes. The Circuit Court dismissed the bill, holding that the balance due on the notes were proper off-sets against William Means' share of his father's estate. The Court of Appeals, reversing the decree of the Circuit Court, held that the plaintiffs, as assignees of William Means, are entitled to recover his full fifth share without deduction of his debt of $136,035.75. In other words, they give to William Means' assignees a double portion of the estate.

I.

The Court of Appeals admit that the money represented by William Means' notes was not a gift or advancement, but that it was a loan or *debt* which might have been enforced against

him by his father during his lifetime, but that the *loan* was forgiven and discharged under the fifth clause of the will.

We submit that the fifth clause of the will does not cancel *debts* due from children to the testator, but that it relates simply to *advancements.*

This is conformable to the notions of justice, which from the earliest times have led courts of chancery to bend their energies (whether in interpreting wills or administering estates) so as to secure equality among children. The same public policy is disclosed in the statutes which everywhere require children to account for advanced portions. It is true that the testator meant to give his children the benefit of certain advances, but his dominating purpose was equality, and that provision was not meant to work a double or triple portion.

Under the Court of Appeals' construction of the fifth clause of the will, William Means gets a *double portion;* and if his father had died before the original advances of $280,311.42 had been reduced by payments thereon to $136,035.75, he would have gotten his equal share as legatee, and $280,000 in addition. If the $280,000 had been paid to him as a *gift* or *advancement*, that would be a proper result. But the question is whether the testator meant by the fifth clause to convert into a gift what he had advanced to a child, not by way of gift but by way of *loan* upon the distinct understanding that it should be repaid to him.

We are not confronted with any question of fact under this head, because the Circuit Court of Appeals find that William Means' notes evidenced *debts*, and not advancements.

To some of the notes were attached agreements in the following form [Record, 212]:

"The above is for money loaned to me by Thomas W. Means, on account of my indebtedness as executor and trustee of the estate of A. Labrot, deceased, and it is agreed as part of the transaction by which I have procured a loan of $45,000 upon the foregoing note, that the amount thereof and all interest shall

be paid from my interest as devisee or distributee of the estate of Thomas W. Means.

WILLIAM MEANS."

The Court of Appeals ignores these express charges on the legacy on grounds not mentioned in the bill. The only evidence on the subject is that of the attorney who prepared and advised the contract, viz:

"We advised Mr. John Means to use this form of note with the writing attached, *that it might clearly and beyond question, under any construction of the fifth clause of the will*, appear that the money so furnished his brother should be a loan, and in no sense an advancement under the terms of that will." (R. 727, 728.)

It is well settled that a legatee's receipt is evidence of the character of the advance, and to show that it was made on account of the legacy. Cowles vs. Cowles, 56 Conn. 240.

If this court is of opinion that William Means, under the fifth clause of the will was not entitled to deduct from his legacy these *debts* due from him to his father, especially in view of the agreements under which the loans were obtained, the judgment of the Court of Appeals must be reversed, because it is concede i that the administrators are entitled to set off debts against the legacy.

II.

But assuming that William Means' debts were not (as an original proposition) set-offs against his legacy, the question remains whether the settlement made by him October 16, 1890, with the administrators, can be set aside. The bill seeks to set this settlement aside upon the ground that the plaintiffs were prior assignees of William Means' interest in his father's estate, and that the settlement between the administrators and William Means was made in collusion with William Means in fraud of

the plaintiff's rights as the real owners of the legacy. The Circuit Court of Appeals do not find that William Means had made an assignment of his legacy to the plaintiff prior to his settlement of October 16, 1890. They set the settlement aside on the ground that the administrators were trustees of William Means and not competent to accept from him a settlement by which he relinquished an interest in the estate to which as matter of law (assuming that his *debt* was not deductible from his legacy) he was entitled.

No such ground for setting aside the settlement is alleged in the bill. If it were alleged, the decision of the Court of Appeals ignores the proposition that it is competent for persons to adjust a disputed claim and that it is no ground for setting aside such a settlement that the claim settled is not well founded in point of fact.

In Callisher vs. Bischoffsheim, L. R. 5 Q. B. 449, which is the leading English case, the defendant being sued on a promise made in consideration of the compromise of a claim, set up that at the time of the compromise agreement, nothing was in fact due to the plaintiff. But the court sustained a demurrer to the plea.

Blackburn, J., said:

"If we are to infer that the plaintiff believed that some money was due to him, his claim was honest, and the compromise of that claim would be binding, and would form a good consideration, although the plaintiff, if he had prosecuted his original claim, would have been defeated."

Cockburn, C. J., said:

"If the defendant's contention were adopted, it would result that in no case of a doubtful claim could a compromise be enforced. Every day a compromise is effected on the ground that the party making it has a chance of succeeding in it, and if he bona fide believes he has a fair chance of success, he has a reasonable ground for suing, and his forbearance to sue will constitute a good consideration. * * *

"It would be another matter if a person made a claim which he knew to be unfounded, and, by a compromise, derived an advantage under it; in that case his conduct would be fraudulent."

In Stewart vs. Stewart (6 Cl. & F. 911, 966), Lord Chancellor Cottenham quotes with approval the following words of Lord Hardwicke, approving the doctrine of Lord Macclesfield:

"An agreement entered into upon a supposition of a right, or of a doubtful right, though it after comes out that the right was on the other side, shall be binding, and the right shall not prevail against the agreement of the parties; for the right must always be on the one side or the other, and therefore the compromise of a doubtful right is a sufficient foundation for an agreement."

"If the solemn compromise of the parties is made to depend on the question whether the parties have so settled the dispute as the law would have done, then it may be truly said that a compromise is an unavailing, idle act, which questions even the power of the parties to bind themselves." Fisher vs. May, 2 Bibb, 448.

Union Bank of Georgetown vs. Geary, 5 Pet. 99, involved an agreement under which the endorser of a note had waived all defence and permitted a judgment to go against her upon the promise of the plaintiff that it would issue an execution immediately against the maker, who was represented to have property sufficient to satisfy the judgment. The plaintiff having failed to keep its agreement by issuing execution, sought to escape from the consequences of its breach by insisting that the indorser had in fact no good defence and that her agreement to waive defence and suffer judgment was therefore no consideration. But this court held that the consideration was sufficient, even though one of its own later decisions showed that the defence of the endorser (which alleged the insufficiency of a demand made on the fourth instead of the third day of grace) could not have prevailed. Mr. Justice Thompson said:

"It is unnecessary to examine whether this defence would have been available or not. The validity of the contract did not depend upon that question. It is enough that the bank considered it a doubtful question, and that they supposed they were gaining some benefit by foreclosing all enquiry on the

subject. . . . To permit a subsequent judicial decision on this point in their favor, as having a retrospective effect, so as to annul a settlement or agreement made by them under a different state of things, would be sanctioning *a most mischievous principle.*"

But it is just this "most mischievous principle" that the Court of Appeals recognizes when it permits William Means' assigns to repudiate the settlement of October 16th, because that court if of opinion that the claim of the administrators, which he then settled, could not have prevailed if contested.

The settlement was made by William Means under the advice of competent counsel, and after protracted negotiations with the administrators.

We respectfully submit:

1. That William Means is not entitled to a double portion, but that his *debt* of $136,035.75 to his father's estate should be deducted from his legacy.

2. That the question whether he was entitled to such a deduction was settled by an agreement between the administrators and himself, acting under the advice of counsel, and that no ground was presented by the bill and found by the court for setting the settlement aside.

LAWRENCE MAXWELL, JR.
Of Counsel.

In the opinion denying the rehearing, the court of Appeals says:

"This court did not find that there was any fraudulent combination between the administrators and William Means in making the settlement of October 16, 1890, to defeat the rights of the beneficiaries under the complainants' trust, and to that extent practically sustained the defendants' contention; but upon other grounds held that the complainants were entitled to recover the amount of the legacy."

In other words, the court ignores the bill as framed, and sustains it simply as a bill to recover a legacy. This was clearly error.

1. Because William Means' legacy had not been assigned to the plaintiffs prior to the filing of their bill.

2. The will provides that no final settlement can in any event be required before three years after the testator's decease. The bill was filed before that time. In In re Spencer (16 R. I. 25, 31) it was held that where a testator had declared that his executors "should have five years in which to settle his estate," a legatee could not maintain a suit for his legacy within that time.

No. 113.

Brief of Maxwell for Petitioner

Office Supreme Court U. S.
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JAMES H. MCKENNEY
Clerk

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Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 113.

THOMAS M. ADAMS and E. C. MEANS, Administrators of THOMAS W. MEANS, *Petitioners*,

vs.

BENJAMIN R. COWEN, EVAN F. WILLIAMS and A. S. FRAZER, *Trustees*.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR THE PETITIONERS.

Printed by JAMES BARCLAY, 108-118 Canal St., Strobridge Building, Cincinnati, O.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR THE PETITIONERS.

STATEMENT OF THE CASE.

Thomas W. Means, a resident of Ashland, Kentucky, died there testate, on June 8, 1890, aged 87, leaving an estate, consisting chiefly of personal property, which was subsequently appraised (including the notes of his son, William Means, for $136,035.75), at $752,302.41 (Rec. 139-141). He left four children, John Means, William Means, Margaret Means, and Mary A. Adams, and one grandson, Thomas M. Culbertson, the only child of a deceased daughter. After directing that his household effects should be equally divided in kind between his four children, he devised the residue of his estate of every kind and wheresoever situated, of which he should die possessed,

equally between his four children and his grandson. The next clause of the will, which is dated July 20, 1880, is the clause under which the controversy at bar arises. It provides as follows (Rec. 37):

"Item 5. I have made advances to my said children which are charged to them respectively on my books, and I may make further advances to them respectively, or to some of them, and to my said grandson, which may be charged on my books to their respective accounts. I desire the equal provision herein made for said children, and the provision for said grandson, to be a provision for them respectively, in addition to said advances made, and that may hereafter be made and that in the division, distribution and settlement of my said estate said advances made, and that may hereafter be made, be treated not as advancements but as gifts not in any manner to be accounted for by my said children and grandson, or any of them, or the issue of any of them."

The advances referred to in the foregoing clause were *advancements* which the testator had made from time to time during a long course of years, to each of his children, including William. Some had received more than others. John, the oldest had received $159,314.36; William, next oldest, $138,409.54; Mary A. Adams, $131,207.48; Margaret, $122,401.35; and Sarah J. Culbertson, who had died in 1874, $109,609.82. After the date of the will (July 20, 1880), the testator made further advancements, equalizing the children, so that by May 14, 1884, each child had received in all just $180,000; and with that the testator balanced and closed his advancement accounts on his books. He was then 81 years of age.

Four years afterwards, viz: in 1888, one of his children, William Mears, *borrowed* from him the sum of $280,311.42, for which he executed promissory notes, payable with interest to the order of the father. Some of the notes were secured by collaterals and others stated on their face that they were to be charged against and deducted from the maker's share as legatee of his

father. William Means made payments on these notes during his father's life-time, so as to reduce the balance due upon them to $136,035.75. After his father's death he made a settlement with the administrators, giving the following receipt (Rec. 29):

Ashland, Ky., October 16, 1890.

Received of Thomas M. Adams and E. C. Means, administrators with the will annexed of the estate of Thomas W. Means, deceased, the sum of one hundred and thirty-six thousand and thirty-five and 75-100 dollars, being a part of my distributable share as legatee under said will applied by them as ordered by me upon the following notes and claims owed by me to the estate of said decedent, and payable to his order, viz:

[Here follows description of ten notes, with balance due on each, aggregating $136,035.75.]

This receipt is given in pursuance of settlement made October 6th, 1890.

William Means.

Attest: John F. Hager.
A. E. Lampton.

The present suit was brought against the administrators in the Circuit Court of the United States for the district of Kentucky, by persons who claim to be assignees of William Means, to recover his full fifth share in his father's estate, in disregard of the foregoing settlement, and without deduction of the amount due upon his notes. The Circuit Court dismissed the bill, holding that the balances due on the notes were proper off-sets against William Means' share of his father's estate. The Circuit Court of Appeals, reversing the decree of the Circuit Court, set aside the settlement of October 16, 1890, between William Means and the administrators, and held that the plaintiffs, as assignees of William Means, were entitled to recover his full fifth share of the estate without deducting his debt of $136,035.75. In other words, that court gave William Means' assignees a double portion of the estate.

The Court of Appeals did not find that the money represented by William Means' notes was a gift or advancement, but on the contrary that it was a loan or *debt* which might have been enforced against him by his father during his life-time, but held that the *loan* was forgiven and discharged by the fifth clause of the will.

Assignment of Errors.

We respectfully submit that the Circuit Court of Appeals erred,

1. In reversing the decree of the Circuit Court.

2. In holding that William Means' debt to his father was forgiven by the fifth clause of the will.

3. In setting aside the settlement of October 16, 1890.

Argument.

We contend that the fifth clause of the will does not cancel debts due from children to the testator, but that it relates simply to *advancements*.

This is conformable to the notions of justice, which, from the earliest times, have led courts of chancery to bend their energies (whether in interpreting wills or administering estates) so as to secure equality among children. The same public policy is disclosed in the statutes which everywhere require children to account for advanced portions. It is true that the testator meant to give his children the benefit of certain "advances," but his dominating purpose was equality, and that provision was not meant to work a double or triple portion.

Under the Circuit Court of Appeals' construction of the fifth clause of the will, William Means gets a *double portion;* and if his father had died before the original advances of $280,311.42 had been reduced by payments thereon to $136,035.75, he would have gotten his equal share as legatee, and $280,000 in addition. If the $280,000 had been paid to him as a *gift* or *advancement*, we could not complain of the result. But the question is whether

the testator meant by the fifth clause to convert into a gift what he had advanced to a child, not by way of gift, but by way of *loan* upon the distinct understanding that it should be repaid to him.

We are not confronted with any question of fact under this head, because the Circuit Court of Appeals found that William Means' notes evidenced *debts*, and not advancements.

To some of the notes were attached agreements in the following form [Rec. 164]:

"The above is for money loaned to me by Thomas W. Means, on account of my indebtedness as executor and trustee of the estate of A. Labrot, deceased, and it is agreed as part of the transaction by which I have procured a loan of $45,000 upon the foregoing note, that the amount thereof and all interest shall be paid from my interest as devisee or distributee of the estate of Thomas W. Means. William Means."

I.

William Means' notes evidenced debts and not advancements.

Both the Circuit Court and the Circuit Court of Appeals have so found. In view of "the settled doctrine of this court that the concurrent decisions of two courts upon a question of fact will be followed, unless shown to be clearly erroneous," the issue of fact as to whether William Means' notes represent debts or advancements is hardly open for discussion in this court. The Carib Prince, 170 U. S. 655, 658. Stuart vs. Hayden, 169 U. S. 1. Baker vs. Cummings, 169 U. S. 189.

1. But assuming that the question is open, we submit, in the first place, that it is not competent to contradict by parol testimony the plain terms of a written contract which promises to repay money with interest, so as to convert that definite promise into a mere memorandum of an advancement. Haggard vs. Hays'

Adm'r, 13 B. Monr. 175. Grey vs. Grey, 22 Ala. 233. Fennell vs. Henry, 70 Ala. 484. Barton vs. Rice, 22 Pick. 508. We do not find the question decided in England. In Hill vs. Wilson, 8 Ch. 888, the Court of Appeal refused to convert a note into an advancement upon the parol evidence of the maker, the court doubting whether it would "be possible on any evidence, to take away the right to sue on the note, there being no mistake" (p. 899).

There are some contrary decisions, but not from courts of the highest authority. The precise question as applied to advancements has never been decided, so far as we know, in the federal courts, but the doctrine, well established in this court, against the admission of parol evidence to control or affect in any manner the plain terms of a promissory note would seem, on principle, to forbid the introduction of parol evidence for the purpose of converting a promissory note into a memorandum of advancement. Specht vs. Howard, 16 Wall. 564; Forsythe vs. Kimball, 91 U. S. 291; Brown vs. Spofford, 95 U. S. 474; Seitz vs. Brewers' Co., 141 U. S. 510; Allen vs. Furbish, 4 Gray, 504; Davis vs. Randall, 115 Mass., 547, 551.

This view is not in conflict with Burke vs. Dulaney, 153 U. S. 228, where it was held that the *delivery* of a promissory note may be shown by parol to have been conditional.

2. At any rate, a promissory note is prima facie evidence of debt, and if parol evidence is admissible at all, it must be clear and convincing to contradict the legal presumption.

Most of the notes at bar were sent by William Means by mail, and the letters are in evidence. They show an absolute and unconditional delivery of the notes. Concerning those which were not delivered by mail there is no evidence to rebut the presumption of debt raised by the possession of the notes by the payee.

The first note is as follows (Rec. 163):

Cincinnati, O., Feb. 15th, 1888.

Due Thomas W. Means or order one hundred and twenty-five thousand nine hundred and eleven, and 74-100 dollars, with interest from date.

$125,911.74. William Means.

On February 15, 1888, John Means, as agent of his father, Thos. W. Means, paid for William Means to the receiver of the Metropolitan National Bank of Cincinnati, said sum of $125,911.-74 to take up William Means' notes for that amount, then held by said receiver. The notes were secured by collaterals belonging to William Means, which John got from the receiver when he paid the notes. John returned to his home at Ashland, Kentucky, that night. On the following day he wrote William Means as follows (Rec. 395):

February 16th, 1888.

Dear Will:

I reached home 1 p. m. to-day. Hattie and Cook came last night. Have not seen father or Maggie—will see them to-night. Have been busy this afternoon making entries of my transactions yesterday, examining, sorting and listing notes and collaterals. My payments yesterday for you amounted to one hundred and twenty-five thousand, nine hundred eleven 74-100 ($125,911.74) dollars. *I think you had better send me note at one day in father's favor for the amount.*

Had a talk with E. F. Williams on my way up, and when I explained to him he agreed with me that this is best to close up the matter at present. He may write you. Will try to send you $1,000.00 to-morrow or next day. Almost train time.

Yours truly,

John Means.

On February 20, not having received an answer to his foregoing letter of the 16th, John wrote to William as follows (Rec. 360):

Ashland, Ky., 20th February, 1888.

Wm. Means, Esq.,
Cincinnati, O.

My Dear Will:—Herewith find forms which explain themselves. Please copy, sign and return to me at your earliest convenience. Also the receipts for cash paid. The sixty-nine (69) shares Big Sandy Pkt. Co. were credited to your "current %" on father's books. There will be need to sell some of the securities to get money to pay what we have borrowed. I also think it best for you to have as herewith indicated, fearing suits be brought against you and other directors which may give you trouble as it now stands. Father is growing more feeble and almost blind. Has seen his children and others for the last time unless an operation restores his sight again. All well, with love to Martha.

Yours truly,
John Means.

The forms referred to and enclosed in the above letter were a pencil draft of the note for $125,911.74, as subsequently executed, and the following draft of a power of attorney which was also subsequently executed (Rec. 115, Exhibit 6).

Cinti., 15th Feby., 1888.

J. M. I hereby give you full power and authority to sell or collect at my expense, all or any portion of the securities pledged by me, to the Metropolitan National Bank of Cincinnati, O., to secure the payment of my notes and of notes endorsed by me, which notes you have thus paid to the amount of one hundred and twenty-five thousand nine hundred and eleven 74-100 ($125,911.74) dollars. I hereby give you full power and authority to sell or collect all or any portion of said securities at any place, either in the city of Cincinnati or elsewhere, at public or private sale at your option at any time hereafter without advertising the same or otherwise giving me any notice.

Before receiving an answer to either of the two foregoing letters, John wrote William a third letter (Rec. 107).

Ashland, Ky., 21st February, 1888.

William Means, Esq.,
Cincinnati, O.

Dear Will: I wrote you yesterday inclosing papers. Am anxious to close up this matter this week. As I propose to leave Saturday, 25th inst., for N. Y. city, returning on or about 3d prox. My address in N. Y. will be 31 Burling Slip. *I desire to have the note to father and to make proper entries on his books and my own before leaving here.* Have transferred to father stocks, viz:

69 shares Cin. Ports. Big Sandy & Pomeroy Pkt Co. at $6,900.00
35 shares Ashland National Bank at..... 3,500.00
9 shares Norton Iron Works at 9,000.00
63 shares Cin. Ports. Big Sandy & Pomeroy Pkt Co. at 6,300.00
10 shares Means, Kyle & Co. at 10,000.00

and do not like to go farther without the authority for which I wrote yesterday. Don't forget to write asking father to protect your notes at the Ashland National Bank, and better send another paper authorizing holding, selling or collecting on the collateral 220 shares M. N. Bank stock.

Yours truly,
John Means.

On February 21st, William, without having received John's foregoing letter of the same day, answered John's letters of the 16th and 20th, as follows (Rec. 115):

Cincinnati, Feb. 21st, 1888.

Dear John:

Yours of the 20th rec'd, and *I send you by this mail my note to Thomas W. Means or order, for $125,911.74.* Receipts for $700, $1,200 and $1,000, Feb. 10th, 11th and 18th respectively; and authority to dispose of securities, all as requested by you. I fully agree with your action in the premises, as the best preparation for the civil suits which are likely to follow. I regret to learn that father continues to grow more feeble, and that he can not again see his children unless an operation be performed to restore his sight. Every word you write on this subject only adds

to the oppression I feel in connection with my own calamities, which are much more crushing than I can express, and cause me to look with envy on anyone who is ready to lay down this life for the life to come. There is no language to express my sense of my condition, which I could even bear, were not others called upon to share the burdens. I do not like to be alone, yet it would appear as 'twere better for all who are near and dear to me that my troubled existence should end in absolute isolation.

Affectionately,

William Means.

The note referred to in the above letter is the note for $125,911.74, already copied (ante p. 7). The receipts are as follows (Rec. 357, 358):

Cincinnati, Ohio, 10th February, 1888.

Received of Thomas W. Means by the hands of John Means seven hundred ($700.00) dollars on account current.

William Means.

Cincinnati, Ohio, 11th February, 1888.

Received of Thomas W. Means by the hands of John Means twelve hundred ($1200.00) dollars on account current.

William Means.

Cincinnati, Ohio, 18th February, 1888.

Received of Thomas W. Means by the hands of John Means one thousand ($1000.00) dollars on account current.

William Means.

John answered William's letter to him of the 21st, as follows (Rec. 361):

23d February, 1888.

My Dear Will:

Yours of the 21st inst., *note and authority to sell securities, came to hand last evening.* Am sorry that my reference to father's sight caused you trouble. He keeps cheerful and contented, walks out every day if good weather, some one taking his hand as he walks. Have explained to him my action in your affairs, amounts paid, how obtained, the advantage of saving securities

pledged from being sacrificed, &c., &c. He understands all, but soon forgets details so that have to explain again when next I see him and always ends by telling me to do as I think best for you. I wrote you not long since as to father's prize in Maggie as a daughter, and assure you that you have in her a sister to be proud of as well. Many here have kind words to speak for you—more than I can mention. With the many warm and able friends who have shown themselves in the past few days don't be discouraged, but cheer up for the sake of your family. I don't think they feel it a burden to share your trouble. It is not that we do for ourselves, but what we do for others will give us most pleasure to think of. Keep me advised of your needs for money and I will try to keep you from trouble on that account. Just now the amount borrowed engages my attention, but I hope soon to have under my control. Yesterday I paid a hundred thousand, so you see I am not in a hole. All well at home.

Yours truly,

John Means.

On February 23d William answered John's letter of the 21st as follows (Rec. 116):

Cincinnati, Feb. 23d, 1888.

John Means, Esq.,
Ashland, Ky.

Dear John:

Yours of 21st just received. Your requests are principally replied to in my letter of the 21st which of course had not come to hand when you wrote. I send herewith request to Thomas W. Means to protect my notes to Ashland Nat. Bank, maturing Feb. 21st, '88, for $6,000, and March 16th, '88, for $9,000, with authority to sell, collect, etc. Martha went out into the country this morning. All are reasonably well except myself, not being quite so strong as I could wish, and I am, with love to all,

Sincerely yours,

William Means.

The request to Thos. W. Means referred to in the foregoing letter is as follows (Rec. 462):

Cincinnati, February 23, 1888.

Thos. W. Means, Esq.,
Ashland, Ky.,

Dear Sir:

Please protect my notes given to and payable at the Ashland National Bank, Ashland, Kentucky, as follows: One maturing February 18-21, 1888, for $6,000, and one maturing March 13-16, 1888, for $9,000, for the payment of which, said bank holds as collateral security 220 shares stock in the Met. N'l Bank, Cincinnati, which you are hereby authorized to hold, sell or collect, at any place, either at public or private sale, at my expense, without advertising the same or otherwise giving me any notice.

Yours very truly,
William Means.

At this point it is convenient to state the circumstances leading up to the foregoing correspondence. We have first quoted the letters themselves to show that the note of $125,911.74 was delivered by mail, and that the delivery was unconditional.

William Means had been the president of the Metropolitan National Bank of Cincinnati. It failed and was put into the hands of a receiver on February 6, 1888. On the next day William Means was arrested by the United States authorities, charged with violating the National Bank Act (Rec. 212). On Friday morning, February 10th, his brother John Means, whose home was at Ashland, Kentucky, where their father, then 85 years old, also lived, arrived in Cincinnati, where he remained until Saturday evening, when he returned to Ashland. He found that William, who was out on bail, was indebted to the bank for about $125,000, secured by collaterals, a list of which with his estimate of their value ($187,800) William delivered to John (Rec. 356, 357).

It appears to have been thought advisable by William Means' friends, with whom John consulted, that William's debt to the bank should be paid, in the hope of affecting favorably the im-

pending criminal prosecution. John went home for the purpose of consulting his father and arranging to raise the necessary money, promising William to return in a few days. He did return, arriving in Cincinnati on Wednesday morning, the 15th, and on that day paid and took up William's notes at the bank. He left Cincinnati the same evening, and upon arriving at home the next day, February 16th, wrote the letter to William, quoted ante p. 7.

John Means raised the money to pay the bank by borrowing it on the notes of his father, Thomas W. Means, which he executed as attorney in fact for his father. $50,000 he borrowed in this way from David Sinton, $50,000 from Henry Hanna, both of whom were business friends, and the balance from John Russell, Margaret A. Means, and Mrs. Adams (Rec. 90, 158.).

The advancement accounts of the children on their father's books had been balanced and closed, as we have already said, four years before. John accordingly opened a new account on those books with William Means, which he entitled "William Means' current account," and in order to further distinguish it from the advancement account wrote over the latter in red ink, as well as over the advancement account of each of the other children, "advances." John first referred to the current account in his letter of February 20th, to William (ante p. 8), and on March 9th (see his letter of that date to William, Rec. 364), gave the latter a detailed statement of his entries on his father's books, saying:

"*I have opened the current accounts to keep separate from accounts of advancements to us.* . . . I would like to know whether what I have done in the matter is satisfactory to you; or have your suggestion to make as to changes in shape of accounts, etc., etc."

To which William answered on the 15th (see his letter, Rec. 116):

"I can not now make you any suggestions as to your manner of keeping accounts, which I doubt not are in every way as they should be."

John Means testifies as follows (Rec. 148):

X-Q. 1513. Did you have any conversation with your father with respect to taking notes from William Means for the money which was paid to or for him after the failure of the Metropolitan Bank?

A. I did have a conversation with him about it, and told him I thought it would be better to close it by note; that the note would show different from what it would if it was a simple account; that I was not sure from the construction of his will what an account charged might be, and I thought it was a matter of better assurance to take the note.

X-Q. 1514. What, if anything, did your father say?

A. He assented to it, and after hearing my reasons, said to do as I thought best. If I thought that was the best way, why he was satisfied to do it in that way.

X-Q. 1515. Did William Means have a copy of his father's last will and testament?

A. He had.

X-Q. 1516. When did he get it?

A. I can not give the date, but I suppose it was not so long after the execution of it. I made a copy of it. He asked for a copy of it and I told father he wanted it, and made the copy for him.

Again (Rec. 153):

X-Q. 1566. State what, if anything, you said to your father with reference to taking a note from William Means for the amounts that he obtained after the failure of the bank in preference to a receipt.

A. I gave as a reason to him that a receipt or charge on his books, simply, would not have the same effect in law that a note showing indebtedness to him would; that my understanding of his will as he had made it, as he understood it, that it was better to take note than to have an account or receipt—to take a note showing evidence of indebtedness and the collaterals received or redeemed from the bank on sale to be applied as credit on the

note, keeping it as an indebtedness in the shape to indicate and show an indebtedness.

Thus it appears not only that the transaction was in fact a loan, and not an advancement, but that it was entered in a new and special account, and a promissory note taken for the express purpose of avoiding any doubt upon the subject, of all of which William Means was duly advised and to all of which he assented.

The Circuit Court made the following finding on this subject:

"In this case the various sums of money which were paid to and for the benefit of William Means, and for which he executed notes to his father, are not charged on William Means' account of advancements or advances, which was already open, but they were entered on another account called "current account," which was opened with the acquiescence of William Means, and for the very purpose, as he knew, to prevent any question being raised as to these debts coming under the provision of the fifth clause of his father's will." (Judge Barr's Opinion, Rec. 51.)

Evan F. Williams, counsel, friend and protege of William Means, and one of the plaintiffs, took the stand apparently for the purpose of testifying that John Means, on the evening of the day on which he made the payment of $125,911.74, had told him that he proposed to take a note from William Means for some other purpose than to represent a bona fide debt. But the court will notice that neither the counsel for the plaintiffs nor counsel for the defendants on cross-examination, were able to secure any definite answer from the witness as to what was said. The witness does indeed say that the note was "temporary," but the rest of his answer shows that he draws that conclusion from the letters in evidence, and that he was not undertaking to repeat anything John Means had said (Rec. 214, answer to question 96). He also says: "We agreed to have William Means sign that note for $125,000, so as to protect his interest in the estate against the attack of creditors," but he immediately adds: "At that time John Means had assigned over to him individually, as we thought,

sufficient securities to pay all he had paid into the bank" (ans. to ques. 115, Rec. 216), showing that the witness understood that the money had not been advanced as a gift, but was to be paid back. Again, he says: "The claim was not to be enforced against William Means. The note was given for his protection alone;" but he immediately adds: "Mr. John Means then had, as we thought, sufficient securities to pay him every dollar which he had put into the bank" (ans. to ques. 119, Rec. 217), showing again the witness's understanding that the money was to be paid back and that it was not a gift to William. Indeed on cross-examination the witness was compelled to admit distinctly that there was no conversation between him and John Means to the effect that the note was not to be paid (Rec. 237, ques. 383 to 389).

The witness repeatedly states that he supposed at the time of the alleged conversation that the money had come from John Means and not from Thomas W. Means (ques. 127-129, Rec. 218; cross-ques. 418 to 423, Rec. 241, 242). If so he could not have expected that it was a gift, nor could he have doubted the propriety of John's taking a note to evidence such an important transaction involving such a large payment of money. We know that the money did come from Thomas W. Means, and not from John, $100,000 of the sum having been borrowed that very day on notes of Thomas W. Means; which is of itself enough to discredit the whole story of Evan Williams' conversation with John Means, constructed, as it is, on the theory that Thomas W. Means had not furnished the money.

Nor was the witness able to explain how the fraudulent scheme at which he hinted was to be carried out, or how the note was to operate as a protection to William Means. This is the same witness who denied a letter which he was clearly shown to have written, and whose testimony on other points was proved by abundant evidence to be false, as the Circuit Court of Appeals

substantially found, in refusing to accept as true his account of the settlement of October 16, which was denied by three witnesses (Opinion, Rec. 624).

William Means was not called as a witness. The presumption is that his testimony would not have supported the plaintiffs' claim. He was in Cincinnati occupying the same room with Evan Williams while the latter was testifying, as we afterwards proved by the testimony of the hotel clerk (Rec. 586). Counsel for the plaintiffs sought to conceal this fact when Evan Williams was on the stand, for he declined to answer as to it upon the advice of counsel (Rec. 311, 312).

William Means' notes were appraised as assets of the estate. A. C. Campbell, one of the appraisers, testifies that shortly thereafter he met William Means, who asked him about the appraisement of the notes and the amount for which they had been appraised, and that witness told him that the appraisers had estimated them at par, and that William Means said it was right to so appraise them (Rec. 549, 550).

Evan Williams' letter of October 18, 1890 (Rec. 420), written by William Means, shows that both of those gentlemen understood the notes to be *debts* which had been settled by the agreement of October 16th, for they complain of an error in the calculation which they ask to have corrected.

Evan Williams uses many other expressions in the course of his testimony, which show that he understood the notes to be debts. For instance, speaking of the settlement of October 16th, 1890, he says (Rec. 316): "Now we have found out, as we think, that we did not owe the estate *that much money*," making it a question of the amount of the debt.

But if we give all the effect that may be claimed by opposite counsel to the testimony of Evan Williams, concerning his conversation with John Means on the occasion in question, it is the

testimony of a single witness flatly contradicted by the testimony of another witness, and that too of a witness called by the plaintiffs themselves. John Means testifies (Rec. 626):

Q. State what was said by you on that trip up the river, if anything, in any conversation between you and Evan F. Williams, with reference to the purpose of taking the $125,000 note.

A. I told him I expected to take Williams' note for the amount paid to protect my father's interest for the payment of this money —to protect him or his estate.

Q. 36. Mr. Williams has testified that you said you proposed to take that note for the purpose of protecting William Means' interest in the estate against creditors, or substantially that; what, if anything, did you say in that respect?

A. I said it was to protect my father's interest or to protect his estate. I did not tell him that it was to protect William Means. I did not tell him; don't think he so understood me; did not think he understood it so then, and I do not think now that he understood it so.

But it is said that there are expressions in John Means' letters to his brother William which confirm Evan Williams' story.

After reaching home on the day following his payment of the $125,911.74, which was also the day after the alleged conversation with Evan Williams, John Means wrote his brother William three letters before receiving an answer from William. Letter of February 16th (ante p. 7), 20th (ante p. 8), and 21st (ante p. 9), in the last of which, not having heard from William, he stated that he was going to New York on the following Saturday and expressed his "desire to have the note to father [for which he had asked in each of his two preceding letters], and to make proper entries on his books and my own before leaving here," adding, "I do not like to go farther without the authority [the power of attorney to sell the collaterals] for which I wrote yesterday."

Again it is said that John's statement in his letter of the 16th

(the letter in which he first asked William for the note ante p. 7) that he and Evan Williams had agreed that that was the "best way to close up the matter at present," indicates some sinister purpose and suggests that the note was requested as a sham. But neither the expression itself nor anything that John did justifies such an inference, for we know from his letter of the 21st that his desire was simply to have the matter closed promptly and proper entries made on his father's books, and we know from the books themselves, which are in evidence, that he did make regular and proper entries, charging the note to bills receivable account, and that on March 9th he reported the entries in detail to William Means (Rec. 363).

The entry on the journal of Thos. W. Means (p. 180), under date of Feb. 22, 1888, which is the day he received Williams' letter of the 21st, enclosing the note is as follows:

Bills Receivable		$125,911.74
To John Means current account		$125,911.74

For note of William Means, dated and due 15th Feb., 1888, in my favor, No. 215.

In John Means' letter to William of the 20th (ante p. 8), he stated "that there will be need to sell some of the securities to get money to pay what we have borrowed," for he had borrowed, as we know, $100,000 from Sinton & Hanna, and accordingly he asked for a power of attorney to sell the collaterals, adding "I also think it best for you, fearing suits be brought against you and other directors, which may give you trouble as it now stands." This, doubtless, refers, as John Means testifies, to an apprehension that the sale of the collaterals and the payment of the loan might be interrupted by attachments at the suit of other creditors. But this apprehension justifies no suspicion of the bona fides of the transaction between John and William, nor does it indicate any disposition on the part of John to interfere improperly with the rights of any of William's creditors. He had raised the money for the very purpose of paying the bank, which was a creditor,

taking securities which, as it turned out, fell short of paying the debt by about $50,000.

In John's letter to William, of February 24th (Rec. 362), he gives a list of securities which William had handed him on the 18th. They were not the securities received from the bank, or held as collateral to the note for $125,911.74, but other securities handed by William to John three days later, as the letter itself states. It is to these securities and not to the note of $125,911.74, or to the collaterals attached to that note that the letter refers, in saying: "I think it may be prudent and safer to send me authority to dispose of *these*, like that sent in regard to the others. After the storm blows over we can arrange about them."

The storm in mind, as John Means testifies (Rec. 393), was the criminal prosecution, for William had already been arrested, and he was indicted the next day, February 25th.

The following is the conclusion of the Circuit Court on this subject (Rec. 52):

"I see nothing in the correspondence between the brothers John and William Means which indicates any other intention than that the moneys paid to William Means or for his benefit, in taking up his debts, etc., were to be debts to Thomas W. Means, and were to be paid out of William Means' share of his father's estate. There is no evidence of any other intention or expectation in the entire correspondence."

The following is a record of the loans other than that represented by the note of $125,911.74.

On the occasion of John Means' first visit to Cincinnati, February 10th and 11th, William Means applied to one C. M. Holloway for a loan of $2,000, offering as collateral 69 shares of steamboat stock (Rec. 98). Holloway declined the loan. Thereupon John handed William $1,900, and took the stock. As soon as he arrived home he opened William Means' "current account" on his father's books, debiting the account with the $1,900, and

crediting it with the stock at par, which was its market value. The entries are as follows, as they appear on Thos. W. Means' journal, under date of February 13, 1888 (pp. 178, 179):

William Means' currrent account	$1,900	
To Ashland N. Bank.—For paid John Means for L. Labrot $700, S. F. Hunt $1,200		$1,900
Steamboat Stock	$6,900	
To William Means' current account.—For 96 shares in Cincinnati, Big Sandy & Pomeroy Packet Co., as per certificate No. 222, dated 11th inst.		$6,900

John reported the credit in his letter of February 20th to William, and requested receipts for the payments, and also for another payment of $1,000, which he had made meantime on February 18th. William sent the receipts promptly (see his letter of February 21st, ante p. 9). The receipts are as follows (Rec. 357, 358):

Cincinnati, Ohio, 11th February, 1888.

Received of Thomas W. Means, by the hands of John Means, twelve hundred ($1,200.00) dollars, on account current.

William Means.

Cincinnati, Ohio, 10th February, 1888.

Received of Thomas W. Means by the hands of John Means, seven hundred ($700.00) dollars on account current.

William Means.

Cincinnati, Ohio, 18th February, 1888.

Received of Thomas W. Means, by the hands of John Means, one thousand ($1,000.00) dollars, on account current.

William Means.

The $1,000 referred to in the last receipt was duly entered on the journal under date of February 20th (p. 180):

William Means' current account	$1,000	
To Ashland N. Bank.—For John Means, 18th inst.		$1,000

February 24, 1888, John sent William $1,000 (see his letter

of same day, Rec. 362). William acknowledges the payment March 6 (Rec. 191), and encloses receipt (Rec. 358):

Cincinnati, Ohio, 18th February, 1888.

Received of Thomas W. Means by the hands of John Means, one thousand ($1,000.00) dollars, on current account.

William Means.

The amount is charged to William Means' current account, under date of February 24th (Journal, p. 181).

The foregoing credit of $6,900, for the steamboat stock, and debits of $1,900, $1,000 and $1,000 (in all $3,900), left a balance of $3,000 to the credit of William Means' current account, which John in his letter of March 9th, after reciting the entries, reports, saying "Thus you can see that there is due you now on current account $3,000 from T. W. M." (Rec. 364).

This credit balance of $3,000, together with a further credit of $5,000, April 2d (Journal No. 2, p. 183), arising from the transfer of 200 shares Ky. I. C. & M. Co. stock, from William to his father, mentioned in John's letters to William, of March 26, 1888, and April 2, 1888 (Rec. 366), was exhausted by the following payments subsequently made by Thomas W. Means, through John Means, to or for William Means, and charged to his current account.

April 2, Paid to C. W. Baker, Attorney, $1,500 (Jour. No. 2, p. 183).

April 21, Paid to S. F. Hunt, attorney $1,000 (Jour. No. 2, p. 185).

May 28, Cinti. draft to Wm. Means, $1,386.36 (Jour. No. 2, p. 186).

William Means requested this remittance in his letter to John, of May 26, 1888 (Rec. 186). See John's letter to William, enclosing the amount, May 28, 1888 (Rec. 368).

June 16 (Jour. No. 2, p. 186), 3 Cinti. drafts, $257.02, $123,-09, and $500.00.

These items were requested by William in his letter of June 14th (Rec. 119), and enclosed in John's letter to William, June 16th (Rec. 368).

July 13, New York draft, Dr. McClellan (Jour. No. 2, p. 187), $1,450.

John reports this payment in his letter to William, dated July 13, 1888 (Rec. 369).

July 28 (Jour. No. 2, p. 188), New York draft to S. F. Hunt, $500.

Aug. 10. Remitted to C'tesse. d'Adhemar, $195.84 (requested in William's letter to John, of July 27th (Rec. 120), and August 5th (Rec. 193).

Aug. 17 (Jour. No. 2, p. 189), Remitted to Emil Labrot, as per request of William Means' letter July 12 (Rec. 130), $1,369.-17.

There are some subsequent payments made to William and charged in his current account. The last was made December 20, 1888. It is not necessary to give them in detail. The account appears on Thomas W. Means' ledger, p. 223 (Rec. 334), and shows a debtor balance of $250.08 still unpaid.

The following is a list of the notes of William Means to the order of his father that were covered by the settlement of October 16, 1890, arranged in the order of their dates. The notes are given in full at pages 162 to 165 of the record:

Feb. 15, 1888, $125,911.74.
Mar. 19, 1888, $15,027.00.
Aug. 20, 1888, $5,041.67.
Sept. 25, 1888, $7,400.00.
Oct. 24, 1888, $2,100.00.
Nov. 9, 1888, $497.13.
Nov. 9, 1888, $75,000.00.
Nov. 17, 1888, $1,620.00.
Nov. 22, 1888, $45,000.00.
Dec. 3, 1888, $2,713.88.

We propose to take up now in the order of their occurrence, the transactions represented by these notes, other than the note of $125,911.74, which has already been fully explained.

On February 23, 1888, William Means, in pursuance of John Means' suggestion in his letter to William of February 21st, wrote to Thomas W. Means as follows (Rec. 462):

Cincinnati, February 23, 1888.

Thos. W. Means, Esq., Ashland, Ky.

Dear Sir: Please protect my notes given to and payable at the Ashland National Bank, Ashland, Kentucky, as follows: One maturing February 18-21, 1888, for $6,000, and one maturing March 13-16, 1888, for $9,000, for the payment of which said bank holds as collateral security 220 shares stock in the Met. Nat'l Bank, Cincinnati, which you are hereby authorized to hold, sell or collect, at any place, either at public or private sale, at my expense, without advertising the same or otherwise giving me any notice.

Yours very truly,

William Means.

On March 19th Thomas W. Means took up the notes of William Means, as requested, paying the Ashland National Bank $15,027 therefor. The following is a record of the transaction as appears on the books of Thomas W. Means under date of March 19, 1888 (Jour. No. 2, p. 183):

Sundries—To Ashland N. Bank	$15,027.00	
Bills Receivable—For notes of Wm. Means, viz: No. 216, one dated 16th Novem., 1887, @ 3 mos, $6,000.00; No. 217, one dated 10th Decem., 1887, @ 3 mos., $9,000.00		$15,000.00
Interest, on same		27.00
The notes secured by collateral, viz: 220 shares Metropolitan Natl. Bank of Cincinnati, O., see Certificates No. 57, 50 shares; No. 237, 37 shares; No. 294, 25 shares; No. 297, 82 shares; No. 312, 26 shares.		
See letter of William Means of 23d of Feb., 1888.		

No note was taken at the time from William Means. The foregoing entry indicates that Thomas W. Means treated the transaction as a purchase of William Means' note from the Ashland National Bank.

On October 15, 1888 (Rec. 166), John Means wrote to William as follows:

"As the intention of creditors to take judgment against you is apparent, they hoping to get them out of father's estate (your share), Moore and Hager advise me to take your notes in his favor at one day for payments made. That under his will as written it is doubtful whether we could hold claim on an account. Seeing and believing this would be true was what induced me to take counsel with them as to the will, which they have examined carefully and authorities relating thereto. *Make and send me your notes in father's favor*—viz: dated 20th August, '88 at one day $5,041,67—dated 25th Sept., '88, at one day $7,400, see his account—and note dated 19th March, '88, at one day $15,027.00 ($15,027.00) for paid your two notes to Ashland National Bank."

On October 22, 1888, William answered John (Rec. 187), saying:

"I enclose herewith some papers, including the promissory notes you asked for."

On October 24, 1888, John wrote William acknowledging the receipt of William's letter of 22d, "enclosing notes in favor of Thomas W. Means, $15,027, $5,041.67, $7,400, of sundry dates" (Rec. 375).

The foregoing request of John Means for these notes contained in his letter to William of October 15th, grew out of the fact that in the latter part of September, 1888, John had consulted J. F. Hager and L. T. Moore, attorneys, to whom he submitted a copy of his father's will. They had given John Means the advice mentioned in his letter of October 15th (see testimony of Hager, Rec. 573, 574), which William Means was in position to appreciate for he also had a copy of his father's will (Rec. 148).

William Means owed a note to the Circleville National Bank, which was secured by the pledge of 50 shares of the stock of the Metropolitan National Bank, certificate No. 171. In July, 1888, it appears to have been discovered that this certificate was an over-issue to William Means, as well as by the bank. John Means refers to this in his letter of July 28, 1888, to William (Rec. 370), saying: "Mr. Hunt [William's attorney] thinks it best to pay off the 50 at Circleville and surrender the certificate No. 171 to Mr. McConville, Agent. This is buying the certificate which it appears should have been surrendered and cancelled."

John, in his letter of August 1 to William, says, on the same subject (Rec. 371):

"The certificate No. 171, held by the Circleville bank is one which it seems should have been surrendered and cancelled. So Mr. Sanders, examiner, found, and also Mr. McConville and Edwards find."

William, before receiving this second letter of John, wrote him on the same day (Rec. 182):

"Yours of July 28th just received. I agree with you that certificate 171, Metropolitan Bank stock, should be paid and surrendered to Mr. McConville."

The same subject is referred to in John Means' letter to William of August 16, 1888 (Rec. 384), in which he says:

"Yours of 10th inst. is found on my return from Cin'ti, where I spent two days, mostly with Mr. S. F. Hunt. We are both decidedly of opinion that it will be best to pay the Circleville note and surrender the certificate No. 171 to Mr. McConville." S. F. Hunt, as heretofore stated, was William Means' attorney.

Accordingly, on August 30, 1888, Thomas W. Means paid the note to the Circleville National Bank, which amounted, with interest, to $5,041.67 (Jour. No. 2, p. 189). John, in his letter of Sept. 12th reports the transaction to William: "Have taken up the Circleville note and suppose Hunt has surrendered the certificate 171 M. N. Bank" (Rec. 384). The payment is entered

August 30, 1888 (Journal, p. 189). William Means' notes for this payment, and also for a payment of $7,400, were enclosed in his letter of October 22d to John Means (Rec. 187). They are entered on Thomas W. Means' books as follows: Oct. 24, 1888 (Jour. No. 2, 192).

Bills receivable	$12,441.67	
Wm Means' current % for his notes: No. 219, dated 20 Aug., 1888, a. 1 day		$5,041.67
No. — dated Sept. 15, a. 1 day		7,400.00

The consideration for the note of $7,400 is that amount remitted on account of a debt of William Means to George Gerke, as entered under date of Sept. 25, 1888 (Jour. No. 2, p. 191. Rec. 121, Ans. to Ques. 1207).

The consideration for the note of Oct. 24, 1888, for $2,100, is $500, paid to S. F. Hunt, on account of William Means, and $1,600 paid to George Gerke on account of William Means' debt. The payments are recorded in Journal No. 2, p. 192. John Means, in his letter of October 20th to William, reports the payment (Rec. 374): "I paid S. F. Hunt $500 to settle some debts for you, and to-day remit $1,600 to George Gerke on the syndicate debt. *Send me your note this day in favor of father for $2,100 for these payments.*"

William Means answers this by his letter of October 24th (Rec. 186):

"Yours of 20th just received. I note the payments you have made on my account, and send note accordingly, i. e.:

To Samuel F. Hunt, my %	$500.00
To George Gerke, my %	1,600.00
	$2,100.00

Please find my note this date to order of Thomas W. Means, payable one day after date, for $2,100."

The note was duly entered on the books of Thomas W. Means as follows: October 24, 1888 (Jour. No. 2, p. 193).

Bills receivable	$2,100.00	
To William Means' current %		$2,100.00
For his note at 1 day, No. 221, dated 24th Oct., 1888.		

The consideration for the note of November 9, 1888, $497.13, was $197.13 remitted to C'tsse D'Adhemar on account of William Means' debt to her, charged October 24, 1888 (Jour. No. 2, p. 192), and $300 paid to Mrs. William Means, by request of William Means on November 6, 1888 (Jour. No. 2, p. 193).

The note of November 9, 1888, for $75,000 is the note requested in John Means' letter of November 3, 1888, to William (Rec. 394). The written agreement upon which the payment of $75,000 was made to McConville, agent, is found on page 124 of the record. This note and also the note of November 9, 1888, for $497.13, were delivered by William Means to John Means, at New Haven, where William Means was staying at the time and where John visited him. There is no evidence in the record to contradict that of John Means, who testifies to an absolute and unconditional delivery of the notes (Rec. 91). They are entered on the books of Thos. W. Means as follows: November 16, 1888 (Jour. No. 2, p. 193).

Bills receivable to sundries	$75,497.13	
William Means' current % for his note (No. 222) dated 9th inst. @ 1 day,		$497.13
John Means' current % for note of William Means, dated 9th inst. @ 1 day, No. 223		75,000.00

The consideration for the note of November 17, 1888, for $1,620, is that sum paid by Thos. W. Means for account of William Means, reported in John Means' letter of November 19, 1888 (Rec. 376):

"I remitted to S. F. Hunt sixteen hundred and twenty ($1,620) dollars, 17th inst., to pay premium on life insurance policy in New York Mutual Life Insurance Co. *Send me note at one day in favor of father for that amount. Better use form by Moore and Hager.*"

William Means appears to have enclosed the note in his letter to John of November 22 (Rec. 196), without making any reference to the note in the letter itself, as appears from John's letter to William of November 28, 1888 (Rec. 376), saying: "Yours of 22d inst. is at hand, covering notes to father, namely $1,620, dated 17th inst., and one $45,000 dated 22d inst., for the Labrot matters;" which latter note is mentioned in William's letter of November 22d as being enclosed therein. The note is entered on Thomas W. Means' books under date of November 28, 1888 (Jour. No. 2, p. 194):

Bills receivable	$1,620.00	
William Means' current % for his note dated 17th inst., @ 1 day, No. 225		$1,620.00

The note of November 22, 1888, for $45,000 is the note, the receipt of which John acknowledges in the passage just quoted from his letter of November 28th, to William. The note is entered under date of Dec. 3, 1888 (Jour. No. 2, p. 194):

Bills receivable, to	$45,000.00	
Bills payable—For my note dated this day in favor of Margaret A. Means, @ 1 day, for which have received note of Wm. Means, dated 22d November, 1888, @ 1 day, to bear interest from 1st inst. For settlement as Exr. and Trustee of estate of A. Labrot, deceased (Wm. M's note No. 226)		$45,000.00

The consideration for the note of December 3, 1888, $2,713.88, and the request for the note are as stated in John's letter of December 3, 1888, to William (Rec. 377):

"My Dear Will: Herewith find N. Y. draft, fifteen hundred dollars ($1,500) for you, which I made payable to the order of Warren Higley, and to-day I sent twelve hundred ($1,200) dollars to George Gerke, to G. R. Dudley thirteen and 88-100 ($13.88), to pay Covington tax property of Eliza Labrot. *Send your note payable to father for amount of these*, viz: $2,713.88, *as per form given to you.*"

The note is entered on the books under date of December 8, 1888 (Journal No. 2, p. 195).

Bills Receivable, To.....	$2,713.88	
William Means' current % for note dated 3d inst., @ 1 day, No. 227		$2,713.88

We have gone over every payment made to William Means, and over every transaction with him involved in this suit, thus fully and in detail, in order to put the court in full possession of all the facts, hoping thereby to make it clear that William Means' notes mean just what they say, and that they were delivered for the purpose of representing debts, as distinguished from the "advances" referred to in the fifth clause of the will.

The Circuit Court of Appeals says that the purpose to create a debt as distinguished from a gift must have been the "testator's purpose, and not that of another" (Opinion Rec. 615), evidently intending that John Means' purpose and understanding are immaterial. But Thomas W. Means, who was old and feeble, acted wholly through John, who was his agent, with full and ample power to do as he thought best. John Means' declarations to William, and his communications with him, as agent of his father, were therefore in law the declarations of his principal.

It is also said that the notes were almost all taken after the payments which they represent. But it will be remembered that John and William lived in different places and that there was necessarily a lapse of time between the payments to or for William and his return of the notes. We can imagine that John Means had a busy day in Cincinnati on February 15, but the moment he reached home he wrote to William, asking for the note of $125,911.74. Is its validity to be affected by the circumstance that it was not signed and delivered on the 15th, but a few dates later?

Upon this general subject the Circuit Court says:

"But it is said by learned counsel that these notes were always taken after the money was paid to or for the benefit of William Means. This fact, if true, does not lessen the effect of the execution and delivery of these notes, since William Means knew the

purpose of John Means was to prevent the money paid to and for his benefit coming under the provisions of his father's will. . . . He also knew when he executed and delivered all subsequent notes payable to his father, the purpose was to create a debt to be paid out of his share of the estate of his father, and not to be advances which would become gifts after the death of his father." (Opinion of Judge Barr, Rec. 51).

II.

Three of the notes are made express charges upon the legacy.

William Means' note of November 9, 1888, for $75,000, contained the following (Rec. 164):

"It is agreed as part of the transaction by which I have procured a loan of seventy-five thousand dollars upon the foregoing note, that the amount thereof and all interest shall be paid from my interest as devisee or distributee of the estate of Thomas W. Means. William Means."

Nov. 9th, 1888.

His note of November 17, 1888, for $1,620, was in the same words (Rec. 165): His note of November 22, 1888, for $45,000 had appended the following (Rec. 164):

"The above is for money loaned to me by Thomas W. Means, on account of my indebtedness as executor and trustee of the estate of A. Labrot, deceased, and it is agreed as part of the transaction by which I have procured a loan of forty-five thousand dollars upon the foregoing note, that the amount thereof and all interest shall be paid from my interest as devisee or distributee of the estate of Thomas W. Means.

November 22d, 1888. William Means."

Where a testator, after making his will, pays money to a general legatee, taking from him a receipt in full or partial discharge of the legacy, it is well settled that the receipt will be enforced, and the payment treated as a satisfaction of the legacy, complete or partial, as the case may be. Cowles vs. Cowles, 56 Conn. 240; Richards vs. Humphreys, 15 Pick. 133.

In cases of intestacy, receipts given for advancements are similarly treated. The authorities are cited in a note to section 551 of Thornton on Gifts and Advancements. Cushing vs. Cushing, 7 Bush, 259, is an instance in Kentucky. In Quarles vs. Quarles, 4 Mass. 680, which is a leading case, a son on receiving a conveyance of land from his father executed a deed of release of his future share of the father's estate. The court held that the instrument could not operate technically as a release, because it did not relate to a present interest, but the court enforced the release as evidence of an agreement on the part of the son to accept the land in satisfaction of his expectancy, and, as the court put it, "for the best reason in the world, because he had agreed that it should," 4 Mass. 687.

The Circuit Court of Appeals calls attention to the fact that the first note for $125,911.74 was not expressly charged against the legacy. But John Means put the debt in the form of a note, and about the same time opened William Means' "current account," all for the purpose, as we have already seen, of confirming the transactions as loans. It may be assumed, too, in view of the collaterals received with the note for $125,911.74, that no great loss was apprehended on that transaction. But when John was apprised by William's letter of July 12th (Rec. 130), of his obligation to the Labrot estate, and saw that large payments might be required on that account, for which William had nothing to pledge but his legacy, he consulted counsel; for we know from his next letter to William that he felt bound to "handle father's affairs with the care of an executor" (Rec. 369). The advice which he received is thus stated by Mr. Hager (Rec. 573):

"Mr. Means at that meeting produced a letter from his brother William, dated in July and referring to the condition of the Labrot Trust in his hands, and asking financial aid and assistance. We considered the provision of the fifth clause of the will of Thomas W. Means, and, in view of the provision there, as to the

form in which a transaction should be had whereby William Means could obtain the money necessary to discharge that trust, and generally, the form in which the transaction should be placed to make the estate secure against any payments of money John Means might make for the benefit of William Means. The result of the conference was to advise John Means, and we did advise him, that in all subsequent dealings with William Means as agent and attorney in fact of Thomas W. Means, John Means should require the form of note and agreement attached, which I now hold in my hand and is in my handwriting. It is as follows:

Ashland, Ky., ——, 1888.

One day after date I promise to pay to the order of Thomas W. Means, the sum of —— dollars, value received, with interest from date.

It is agreed as part of the transaction by which I have procured a loan of —— dollars, upon the foregoing note, that the amount thereof and all interest shall be paid from my interest as devisee or distributee of the estate of Thomas W. Means.

"We advised Mr. John Means to use this form of note with the writing attached, *that it might clearly and beyond question, under any construction of the fifth clause of the will*, appear that the money so furnished his brother should be a loan, and in no sense an advancement under the terms of that will.

"I will state I can not give the exact date, but it was somewhere between the 22d and 25th of September."

John communicated this advice to his brother William in his letter of October 15, already quoted (ante p. 25), and it was in pursuance of this advice, and not for any improper purpose, that John took notes for certain previous payments, for which he held receipts on current account, and that he required William to execute notes on the form prepared by attorneys Moore & Hager, for future payments.

It is true that the consideration upon which the note of November 9, 1888, $75,000 was given, was paid by John Means to the receiver of the Metropolitan National Bank, eight days before

the note was delivered (Rec. 110, 124), but William, who was then at New Haven, Conn., was advised of the payment immediately, John saying in his letter of November 3, 1888 (Rec. 394):

"We hope to get dismissal, i. e., a nolle p. as result of our conference. If so, am to pay $75,000 to the agent of the bank's stockholders, and have deposited that amount with a trustee. Will explain when I come East.

"*Make your note at one day, favor of father*, $75,000, dated 1st inst. (the time I made deposit), *and give the note to Mary to hold until I come.* Expect to start Monday or Tuesday (5th or 6th) and to reach you Thursday or Friday.

"Hoping Maggie is much better and will be able to come home with me. I can not stay more than one or two days, and then must come home, and to Cincinnati. Don't be concerned about raising your bond. Saw Judge Sage about it and he explained kindly why he raised the amount."

We know from John Means' testimony that he did go to New Haven, as he proposed in his foregoing letter, and that William then and there ratified what John had done, and delivered the note and pledge absolutely and unconditionally (Rec. 111). John indeed had made the payment upon the advice of William Means' counsel, S. F. Hunt (Rec. 110).

The $45,000 note was made at a late stage of the proceedings for the purpose of raising money to settle William Means' defalcation to the Labrot estate, of which defalcation John was first advised by William's letter to him of July 12, 1888 (Rec. 130). It was after this and in connection with the advance which John was expecting to be called upon to make, to settle that defalcation, that he consulted attorneys, Hager and Moore, and received from them the advice already quoted. It was in pursuance of that advice and for the purpose distinctly stated in the paper drawn by Mr. Hager, that John required that paper to be signed by William Means. He enclosed it in his letter to William, of

November 16 (Rec. 375). On November 22 (Rec. 196), William returned the note and pledge executed, to which John replied November 28 (Rec. 376): "I wish to settle with trustee by giving Maggie's note or notes at such time as we can pay them, and to give her father's note, he holding your notes 45 M."

And the defalcation was settled in precisely that way. This was in pursuance of the purpose which John had expressed in his letter of October 20th, in which, referring to the Labrot defalcation, he said: "I think we can pay your debt, but I shall try to do so in such a manner that the amount shall not be a dead loss to ourselves nor to father's estate" (Rec. 374).

A new trustee had not yet been appointed for the Labrot estate. Until such appointment no settlement could be made, but it was important to be prepared to settle the moment a trustee should be appointed, and as Thomas W. Means might die any day, provision for raising funds was made by giving Thomas W. Means' note for $45,000 to Margaret Means, she agreeing to pay the Labrots. On February 28, 1890, John Means, out of his father's funds, paid Margaret the amount of the father's note, $45,000, with interest, $3,334.50 (Journal, p. 205, Record, 594), and she surrendered the note. Subsequently, on August 22, 1890, after her father's death she paid William's debt to the Labrots, amounting to $72,014.78, using this $48,334 50 as part of the payment so made (Rec. 199, 516).

Thomas W. Means does not appear to have taken any personal part in the transaction, or, indeed, to have known of it. He was on the verge of imbecility when the note was executed to Margaret, and a confirmed imbecile, under the care of committee and incapable of making a gift when the money was paid, February 28, 1890. What was done was done by John Means, as his attorney, and upon the distinct understanding expressed in writing between him, as such agent, and William Means, that the money advanced on that account should be returned out of William's legacy.

We submit that there is not a word of testimony in the record to justify the statement of the Circuit Court of Appeals "that the notes and instruments charging the legacy were intended to be operative only in case the creditors should proceed against the collaterals or for the purpose of subjecting William's legacy to the payment of their debts."

III.

The charges on the testator's books against his children referred to in the fifth clause of the will are advancement charges and not debts.

In construing the will it is of the first importance to try to place ourselves in the position of the testator, and to consult, for that purpose, the books to which he refers in the fifth clause, in order to ascertain the nature of the "advances" which he had in mind when he used that expression.

The Circuit Court of Appeals says: "There is no doubt that Thomas W. Means was accustomed to enter his charges in his books as denoting an indebtedness from the children to himself, or that he intended to continue that practice and to hold them as debtors. The will signifies as much when read in connection with his books, to which it refers" (Rec. 617).

We contend on the contrary that the charges to his children, to which the testator refers as having already been made, as well as those which he had in contemplation, and which he subsequently made, are charges of advancements, and not of debts, and that this is shown not only by the books themselves, but by clear and uncontradicted parol testimony.

James Bull, at one time the testator's bookkeeper, testifies as follows (Rec. 547):

"He kept an account with each of his children on his ledger, and whenever anything was paid out for them it went on these accounts, and he has told me that he intended after his death that

his property should be divided equally among all his children, that they should share alike, and he was keeping his record to show how much each one was getting from time to time."

The only other witness on this point is John Means, who also assisted in keeping the books. He was called by the plaintiffs. He testifies as follows:

"My father would say often, in handing me things which are charged, that he was giving me this. I understood it as a gift, and not as a debt to be paid back" (Rec. 144).

Again (Rec. 167):

"When he [Thomas W. Means] opened the first account he had made no will, and he contemplated to make the division of his estate among his children, and kept the account to show what each one had and after the making of his will he made no change in the account. He kept on just in the way it had been begun."

Again, the question being put by plaintiffs' counsel (Rec. 170):

"R. D. Q. 1704. As I understand your testimony on the cross-examination, Mr. Means, it is, in substance that your father intended originally to divide his estate equally between his children, and these charges against each of the children for money they received were to stand as charged against them, and were to be deducted from their portions of his estate. That, I understand, was his original intention. Is that correct?

"A. That is correct. That was his intention."

The books themselves, without parol evidence, show that the charges to which the testator refers in his will, were in fact advancements.

We find an account with each child opened on the testator's books. That of the oldest son, John Means, was opened January 22, 1855. At the top of the page, in the testator's handwriting, and signed by him, is the following statement (Ledger p, 19):

"This ac't and the ac'ts of Wm. Means and Mary Ann Adams are not to be charged with interest when final settlement is made —or at any time. Thomas W. Means."

On page 281, to which the account is carried in 1866, is written in the handwriting of some one else, but signed by the testator:

"No interest shall be charged on this account on final settlement or at any other time. Thomas W. Means."

The account of William Means (Ledger, p. 40) was opened February 6, 1885. There is no superscription over this page. On page 220, to which the account was carried in 1860, is written in the handwriting of some one else, but signed by Thomas W. Means:

"No interest shall be charged on this account on final settlement or any other time. Thomas W. Means."

The account of Mrs. Mary Ann Adams was opened (Ledger, p. 16) November 16, 1862. On this page there is no superscription. The account is carried forward in 1867 to page 287, over which on that page is the following statement in the handwriting of some one else, but signed by Thomas W. Means:

"No interest shall be charged on this account on final settlement or at any other time. Thomas W. Means."

Mrs. Culbertson's account (Ledger, p. 280) was opened September 18, 1866. It is all contained on that page. It is superscribed in the handwriting of some one else, signed by Thomas W. Means, as follows:

"No interest shall be charged on this account on final settlement or at any other time. Thomas W. Means."

The account of Margaret A. Means (Ledger, p. 320), the youngest child of the testator, was opened October 24, 1872. The ledger account is all contained on one page. This account is superscribed in the testator's handwriting, written in pencil and signed by him as follows:

"No interest to be charged on this act at any time. Thomas W. Means."

The first debit entry on the account of Thos. W. Means, Jr.,

the son who died in 1872 (Ledger, p. 306), is March 22, 1871. It is a short account. Over it is written in the testator's handwriting "This is not to be paid." There is no reason to suppose or suggested in the record that the testator meant to treat this son differently from his other children. He was a younger son. His account was opened nearly twenty years after that of John Means, and it is fair to assume that the testator's superscription over it—"This is not to be paid,"—was intended by him as the equivalent of the superscription over the other accounts.

In Hine vs. Hine, 39 Barb. 507, 512, a receipt from father to son for money which the son was "to account for without interest," was held to be the best evidence of an advancement.

Under date of December 9, 1873, the testator made and signed the following entry, Journal No. 2, p. 4:

Thomas W. Means, to sundries	$400,000.00	
John Means		$80,000.00
Wm. Means		80,000.00
Mary A. Adams		80,000.00
Margaret A. Means		80,000.00
S. J. Culbertson		80,000.00

For amount to reduce the balance against these accounts, having been given to my children. Thomas W. Means.

This seems to be a clear statement by the testator that the accounts represented gifts.

The two preceding entries made on the same day, and on the same page of the journal, are equally significant, viz:

Sundries to John Means	$23,400.00	
Mary Ann Adams, for this amount paid her		$11,700.00
Maggie A. Means, for this amount paid her		11,700.00
Sundries to Thomas W. Means	$10,543.01	
Mary Ann Adams, for bills paid last summer in California		$124.84
For bd. T. M. Adams, say		250.00
Magg A. Means, for bill in Cal. last summer		35.67
S. J. Culbertson, for 1-4 of Buena Vista Furnace lands and interest in business deeded to W. W. Culbertson some years ago		10,000.00

John Means' account at that time showed a debtor balance of $171,271.36, Mrs. Adams' account a debtor balance of $81,847.78, and Margaret's account a debtor balance of $70,415.68. In other words John was $89,423.58 ahead of Mrs. Adams, and $100,855.68 ahead of Margaret. The foregoing entry of December 9th, shows that John paid each of his sisters $11,700, out of his own money, towards equalizing them with him.

The charge of $10,000 to Mrs. Culbertson's account is equally significant. It shows that she was charged with that amount as an advancement on account of property given to her husband "some years ago." Of course she could not be charged as a debtor to her father with property given to her husband. But she could be and evidently was charged with the gift to her husband, as an advancement against herself.

Under date of July 2, 1879, we find the following charge to Mrs. Culbertson's account (Journal, p. 86):

Mrs. Jane Culbertson..... $27,683.21

For various items in % of Means & Co., paid on her house in Ashland, for construction, and for improvement of the grounds; N. B.—These are found in memo. by Thos. M. Adams, copied from books of Means & Co., and entered by order of Thomas W. Means, this day.—John Means.

Mrs. Culbertson had been dead for five years (Rec. 84). The entry was therefore evidently made not "to denote an indebtedness," but to keep a record as against her son, of what she had received by way of advancement. The Statute of Ohio, of which state the testator was then a citizen, provided that advancements to a child should be accounted for on distribution by its descendants. Rev. Stat. Ohio, sec. 4169. There is a similar entry under date of September 16, 1878 (Journal, p. 75), where the testator charges Mrs. Culbertson's account with $206.91 "for an old account standing on C. M. & Co.'s books, and charged to T. W. M."

On March 9, 1874, we find the following charge to William Means' account, which seems to indicate an advancement. Indeed the entry says: "these bonds given" (Journal No. 2, p. 13):

William Means, to sundries	$21,200.00	
U. S. 10-40 Bonds, for 18 bonds numbered as follows, viz: 2630, 5449, 17271, 17283, 17285, 17286, 21483, 18702, 50238, 83284, 101405, 101406, 101407, 101408, 101409, 105389, 107283, 95250, ea. $1,000, total		$18,000.00
For 4 bonds, Nos. 16064, 16579, 15581, 47607, each $500.00, total		2,000.00
Profit and loss for premium on same		1,200.00

These bonds given about last of October last.

On April 28, 1881, William got 63 shares of steamboat stock charged, on the next day, as follows (Journal No. 2, p. 117):

William Means, To Steamboat stock	$6,300.00	
For 63 shares Cinti, Portsmouth, Big Sandy & Pomeroy Pkt. Co. 28th inst.		$6,300.00

John testifies that he brought the certificate from Ashland to Cincinnati, where he handed it to William (Ans. to cross-question 1499, Rec. 146).

Under date of January 29, 1874, we find the following entry (Journal No. 2, p. 9):

Sundries to Norton Iron Works Stock		$30,000.00
Margaret A. Means, for 6 shares of stock	$6,000.00	
S. J. Culbertson, for 6 shares of stock, 3 to yourself and 3 to W. W. Culbertson	6,000.00	
Mary A. Adams, for 6 shares of stock	6,000.00	
William Means, for 6 shares of stock	6,000.00	
John Means, for 6 shares of stock	6,000.00	

N. B.—This leaves belonging to Thomas W. Means 23 shares, $23,000. See certificate No. 80.

This indicates on its face, not a sale of the shares for which the children became indebted to the father, but a distribution of property by the father among all of his children by way of advancement. Note that Mrs. Culbertson's account is charged with the shares given to her husband as well as with those given to her.

The same inference of advancement must be drawn concerning the following entry of May 24, 1897 (Journal No. 2, p. 85):

Sundries to Means, Kyle & Co. stock.		$40,000.00
Mary A. Adams, for 20 shares transferred to her 5th inst.....	$20,000.00	
Margaret A. Means, same.....	20,000.00	

It shows an advancement of 20 shares of stock to each of the testator's living daughters.

Under date of July 6, 1880, we find the following entries (Journal No. 2, p. 105):

Sundries, to Norton Iron Works "Stock".....		$24,000.00
M. A. Means, for 6 shares, at $1,000.....	$6,000.00	
M. A. Adams, for 6 shares, at $1,000.....	6,000.00	
William Means, for 6 shares, at $1,000.....	6,000.00	
John Means, for 6 shares, at $1,000.....	6,000.00	
Sundries, to Ky. I. C. & M. Co. "Stock".....		$40,000.00
M. A. Means, for 200 shares at 50 per s.....	$5,000.00	
M. A. Adams, for 200 shares at 50 per s.....	5,000.00	
William Means, for 200 shares, 50 per s.....	5,000.00	
John Means, for 200 shares, 50 per s.....	5,000.00	
Profit and loss on 800 shares, as above.....	20,000.00	

These entries plainly indicate, not a sale of stock by the testator to his children, but an equal distribution among them by way of advancement of 6 shares of Norton Iron Works stock, and 200 shares of Ky. I. C. & M. Co. stock to each. His will, which was executed fourteen days later (July 20, 1880), was probably in course of preparation at that time or at least in contemplation, and when he spoke therein of "advances" "charged on his books to his children," he doubtless had foremost in his mind the foregoing distribution and charge.

The next entry after the execution of the will is equally significant. September 4, 1880, Journal No. 2, p. 110.

William Means	$590.46	
To Ashland N. Bank, for 55 this amt.....		$590.46
Sundries, to John Means	$1,339.36	
M. A. Adams, for this amount		$202.52
M. A. Means, for this amount		968.65
Ashland N. Bank, for this amount		168.19

Above payments made to bring these accounts to even amounts.

It shows an equalization of advancement accounts, for the convenience of the bookkeeper, and since John was still ahead of the other children he made the necessary payment to each of his sisters and a payment of odd dollars and cents into his father's bank account, in order to leave his advancement balance an even thousand, $78,000.

John's letter of the same day to William (Rec. 391), and William's answer of September 8, 1880 (Rec. 392), are as follows:

Ashland, Ky., 4 September, 1880.

William Means, Esq.,
55 Fountain Square,
Cincinnati, Ohio.

Dear Will:

Herewith please find father's check on Ashland N. Bank, Five hundred and ninety 46-100 ($590.46) dollars, which he sends you to bring your account on his books up to even thousand. I pay Mary and Magg, and him, the amounts needed to bring Mary and Maggie's accounts up to even thousands. While I do not believe any of you have any feeling of jealousy or wrong that he has heretofore paid or *given* to me more than any other of his children, I do desire that his *distributions* shall be made hereafter so as to bring the rest of us up to the amounts paid myself. And as the girls have each received less than either of us you can very properly, and without selfishness, or appearance of it, advise him to this course, and I hope you will do so and not hesitate, because it may be to your own advantage at the same time. Hattie and Rose are in the mountains of Virginia, but we look for them home to-day.

Harry and Cook leave Monday for Marietta. All well.

John Means.

Cincinnati, September 8, '80.

Dear John:

Yours of 4th inst. enclosing advice and check on Ashland National Bank just received by me after several days absence at Yellow Springs.

I suppose the amount ($590.46) is proper to make balance even thousands, though I have no time as yet to examine it.

I approve entirely of your views as to bringing up those who have not received so much as we have, and will recommend it.

Mary and Emma Campbell are expected at Y. S. soon. My wife was quite ill yesterday, and I feel that her health is about as infirm as last year. The children are well.

I am, yours truly,

William Means.

These letters show that the charges of September 4, 1880, to the accounts of the children were not made to "denote indebtedness," but to record a distribution of money made by the testator among his children by way of advancement, and that it was so understood by all parties. They also clearly show that what had theretofore been charged on the children's accounts and the balances then standing on those accounts represented advancements and not debts.

The books show what was subsequently done in pursuance of John's suggestion that the children should be made equal.

Mrs. Adams received $39,632.55 from her father on September 22, 1881 (Journal No. 2, p. 120), which brought her within $154.55 of $180,000. She received nothing further until May 14, 1884, when she was paid $154.55, being the occasion on which all of the children were equalized at $180,000.

On June 27, 1882, we find the following distribution (Journal No. 2, p. 134).

John Means, to sundries	$15,000.00	
R. R. Bonds, for 5 L. & B. S. R. R. E. D. Bonds, 1 m. ea.		$5,000.00
Low Moor Bonds, for 10 Low Moor Iron Co. Va. Bonds, 1 m. ea.		10,000.00
Wm. Means, to sundries	$30,000.00	
Norton Iron Works Bonds, for 10 Bonds ea. 1 m...		$10,000.00
R. R. Bonds, for 10 Bonds, ea. 1 m.		10,000.00
Low Moor Bonds, for 10 Bonds ea. 1 m.		10,000.00

Margaret A. Means, to sundries	$32,000.00	
Norton Iron Works Bonds, for 6 Bonds 1 m. ea		$6,000.00
R. R. Bonds, for 16 Bonds, 1 m. ea		16,000.00
Low Moor Bonds, for 10 Bonds, 1 m. ea.		10,000.00

John testifies that he himself brought William's share of the distribution ($30,000 in bonds) from Ashland to Cincinnati, where he handed them to William "down in the Safe Deposit Company, in the old Lafayette Bank" (Rec. 146. Ans. to cross-question 1499). He was then asked (Rec. 146):

X-Q. 1502. When you gave William this $30,000 of property, what did you say to him and what did he say?

A. I told him that these bonds were from father as a gift to him. I told him what he had given the others.

Aside from a small payment of $551.01 to Margaret, on July 26, 1883 (Journal No. 2, p. 142), no advancements were made to any of the children after the foregoing distribution of June 27, 1882, until the final distribution of May 14, 1884, by which all of the children were equalized at $180,000. The entry of that distribution is as follows (Journal No. 2, p. 148):

Sundries, to Bills Receivable	$30,000.00	
John Means, for A. C. & I. R. Co., dated 11 March, '84, @ 1 yr., No. 90		$4,000.00
Wm. Means, the same (No. 91)		4,000.00
Margaret A. Means, the same (No. 86)		20,000.00
Margaret A. Means, the same (No. 92)		2,000.00
Sundries to Ashland N. Bank	$903.54	
Wm. Means, for check		$700.00
Mary A. Adams, for check		154.55
Marg. A. Means		48.99

N. B.—This is done to make these accounts even amounts.

A general view of any of the children's accounts confirms the deduction which we are bound to draw from the typical entries already quoted, that the accounts are advancement accounts.

Take William Means' account, for instance. The last credit

item in it is that of $80,000, December 9, 1873, when the account of each child was similarly credited. From that time on the account consists altogether of charges made to record advancements, the most important of which we have already mentioned. There is no entry of any other sort after December 9, 1873, down to the transactions of February, 1888, when the new current account was opened.

Margaret Means' account opens October 24, 1872, with a charge of $12,500 for 100 shares of stock of the Ashland National Bank (Journal No. 1, p. 395). She was then a girl of twenty, just out of school. It is hardly likely that she was buying this stock from her father. The books show no payment for it. About a month later we find her father charging her account with $12,000 for a note of that amount, made by the Union Bank at Marietta, O., to his order, which the journal entry states that he "endorsed to her" (Journal No. 1, p. 397, November 30, 1872).

In the following April we find her father giving her and charging to her account, $20,000 in cash (Journal No. 1, p. 402, April 19, 1873), which he would hardly have done if he had understood that she had bought the foregoing bank stock and bank note from him, and that she was indebted to him therefor.

Within a period of two years and one month after the opening of her account, during all of which time she was a young girl, living in her father's home, it shows that she received $84,331.35 in money and property from her father, all charged to her account on her father's books, but manifestly not for the purpose of "denoting an indebtedness."

The account of Thomas W. Means, Jr., a younger son, who died in 1872, shows only two debits, viz: March 22, 1871, $50,000, "for 50 shares stock in the corporation of Means, Kyle & Co., at $1,000 each" (Journal No. 1, p. 372), and $6,250, April 20, 1872, "for my check, this amount in payment of 50 shares Second National Bank stock ($100 each), at 25 per cent. premi-

um" (Journal no. 1, p. 386). Both of these charges are debit charges, similar to the charges which appear in the accounts of the other children, and which the Circuit Court of Appeals says were made to "denote indebtedness." But we know that that was not the purpose of the entries, but on the contrary, that they were made to denote advancements, as the following entry made by the father after the son's death clearly shows (Journal No. 1, p. 398, December 9, 1872).

Sundries, to T. W. Means, Jr.	$56,250.00	
William Means, for 10 shares stock in the corporation of Means, Kyle & Co., $1,000 each		$10,000.00
William Means, for 10 shares stock in 2d National Bank of Ironton, $100 each, and 25 per cent. premium		1,250.00
Mary A. Adams, same as above		11,250.00
S. J. Culbertson, same as above		11,250.00
Jno. Means, same as above		11,250.00
Margt. A. Means, same as above		11,250.00

The above entry is made to divide stock belonging to T. W. Means, Jr., deceased, equally among his heirs.

The foregoing entry is doubly significant, because it shows that the charges thereby made to the accounts of the other children, were not made to "denote indebtedness" from them to their father. The stock, as he states in the entry, was not his but theirs. They had inherited it from their deceased brother. They did not therefore become indebted for it to their father. The charge was evidently not made "to denote an indebtedness."

Mrs. Mary A. Adams' account was opened November 16, 1862 (Ledger, p. 16, Rec. 334). The account on that page of the ledger runs from Nov. 16, 1862, to July 17, 1867. There are no credit entries. The debit entries amount to $17,003.04. The following is the only large item: March 29, 1867, Journal No. 1, p. 324:

Sundries to John Kyle	$10,562.50	
Mary A. Adams For U. S. 5-20 Bonds, Jan. 31, 1886		$10,000.00
do do premium on do		442.50
do do Watch of Owens & Co. 29th Mar		120.00

It indicates plainly enough the gift of a watch and bonds, which are charged in her account, but not for the purpose of "denoting an indebtedness."

On May 14, 1873, the ledger (p. 287) shows a balance of $64,-805.94, standing against Mrs. Adams. If her father regarded this as a *debt* due from her to him we would hardly find the following entry, which appears under date of May 14, 1873 (Journal No. 1, p. 403), and plainly shows a gift to her of $3,000 in cash, and the repayment to her with interest of a loan of $600, which she had made to her father.

Sundries to Ashland National Bank	$7,640.00	
Margt. A. Means, For ck. this amount to John....		$4,000.00
Mary A. Adams For ck. this amount to John		3,000.00
do For ck. this amount to John in-payment of same amount borrowed from her in Sept. 1872		600.00
Interest, To M. A. Adams for use of the above $600		40.00

May 20th, 1870, the ledger (p. 287), shows a balance of $38-911.90 against Mrs. Adams. On that day Thomas W. Means executed to her his note for $4,165.44, and paid same with interest at 10 per cent. per annum, March 18th, 1872 (Journal No. 1, pp. 361, 384).

August 20th, 1870, the balance against Mrs. Adams was $39,-454.06 (Ledger, p. 287). On that day her father executed to her his note for $10,145.62, and paid same, with interest amounting to $1,606.38, April 25th, 1872 (Journal No. 1, pp. 365, 388).

The inventory of the real and personal estate of Thomas W. Means, May 3, 1890, by T. M. Adams, committee (Rec. pp. 429-433), shows that Mrs. Mary A. Adams held a note of her father, Thos. W. Means, dated Sept. 26, 1888, for $1,500. Her account on her father's books at that time, Sept. 26, 1888, showed a debit balance of $100,000. If Thos. W. Means regarded that balance as a debt he would hardly have thought it necessary to execute a note to her for $1,500.

Under date of May 14, 1873, we find the following entry, Journal No. 1, p. 404.

Margaret A. Means $4400
To Second National Bank. To ck. for J. T. Davis. The note of J. T. Davis for $4400 bearing interest at 10 per cent. and secured by mortgage on real estate was received for the above ck. and given to M. A. Means.

And under date of December 9, 1873, the following entry (Journal No. 2, p. 5).

Mary Ann Adams, To $4,400.00
Margaret A. Means, for J. T. Davis' note, see entry journal 404, page 14, May —, the note and mortgage having been made to Mary A. Adams, not to M. A. Means $4,400.00

These entries indicate a gift of the mortgage note to Mrs. Adams, which the bookkeeper erroneously charged to Margaret, afterwards correcting the entry by charging it to Mrs. Adams, to whom it had really been "given."

The testator makes no distinction in his will between the account of John Means and that of the other children.

Until 1882, Thomas W. Means lived at Hanging Rock, Ohio, across the river, and about eight miles from Ashland, Ky., where his son John lived. During that period John, as the evidence shows, acted frequently as his father's agent (Rec. 72). The books further show that John was a very careful and particular accountant, making the most precise entries of every transaction. Accordingly, we find in his account on his father's books such entries as these:

On August 1, 1881, he is debited with $50,000 (Jour. No. 2, p. 118). He explains in his evidence (Rec. 149) that he received this money from his father with which to buy for his father certain securities. When he bought the securities he credits his account with the payment made therfor, to wit:

1881, August 18 (Journal No. 2, p. 119).

Bills Receivable, to	$20,000.00	
John Means.		
For note of A. C. & I. Ry. Co. this date @ 1 day, with interest at 6 per cent., with 20 bonds of said Railway Co. as collateral security, Nos. 275 to 294 inclusive.....		20,000.00

and on December 25, 1881 (Jour. No. 2, p. 126), he credits himself with $30,146.37, which he paid "for 30 bonds of the Low Moor Iron Co., Va., Nos. 170 to 199 inclusive."

John Means did not become debtor to his father for the sum of $50,000, charged as above to his account. The money was simply placed in his hands as agent for his father; but in order to keep a record of the transaction, John entered the money as a debit on his own account on his father's books when he received it, and afterwards when he paid it out, for bonds purchased for his father, he made a counter-credit entry. According to the plaintiffs' claim, if Thomas W. Means had died before John had invested this $50,000, it would have become a bequest to him under the will. Such, indeed, would be the consequence under the decision of the Circuit Court of Appeals, for that court held that the charges in the children's accounts were made to "denote indebtedness."

There is a similar entry under date of October 10, 1872 (Jour. No. 1, p. 395), where John Means is charged with $47,597. The entry following is a credit of the same amount "for 44 $1,000 U. S. 10-40s bonds." The entry on its face shows plainly that John Means received from his father certain money with which to buy for his father certain bonds. He took the precaution to charge himself with the money on the books when he received it, and to credit himself again when he had purchased the bonds, as agent for his father.

John Means testifies that on the only occasion on which he borrowed money from his father he gave a promissory note, which he paid with interest (Rec. 148, 149).

When the balances were brought to even thousands in Sep-

tember, 1880, after the execution of the will, John Means' balance was $78,000. It is manifest that that balance, without undertaking to separate the items that had heretofore appeared in his account, was treated by his father as his advancement balance. In the typical entries which we have already quoted appear the principal items during the last 20 years of his father's life of the advancements made to John Means, in connection with those to the other children.

The Circuit Court made the following observation concerning the account of John Means (Rec. 50):

"John Means' account does include items which were neither advancements or advances, whatever may be the meaning of that word as used in the will, as he himself proves. Thus, he received $50,000 from his father, August 1st, 1881, to be invested, not for himself, but for his father. This item is charged to John Means, and he is credited by the subsequent investments. Such entries as these, made or directed by John Means are not inconsistent with the general statement that the several accounts were intended to show the advances made by Thomas Means to his several children, and the character of those advances which were not in the shape of notes, or money loaned and evidenced by written promises to repay him."

After the equalizing entry of September 4, 1880, already referred to, William Means' balance stood	$59,000.00
Subsequently he received the following advancements, making just $100,000, viz:	
1881. April 29. 63 shares Steamboat stock.....	6,300.00
1882. June 27. Bonds	30,000.00
1884. May 14. Note of the A. C. & I. R. R.	4,000.00
1884. May 14. Cash	700.00
	$100,000.00

The foregoing is all there is of William Means' account after the date of the will.

IV.

Debts due to the testator from his children are not forgiven by the fifth clause of the will.

If we have demonstrated that the "advances" made prior to the date of the will and charged on the testator's books were in fact advancements, the meaning of the fifth clause becomes plain. It must then read:

"Item 5. I have made advances [advancements] to my said children, which are charged to them respectively on my books, and I may make further advances to them respectively, or to some of them, and to my said grandson, which may be charged on my books to their respective accounts. I desire the equal provision herein made for said children, and the provision for said grandson to be a provision for them respectively, in addition to said advances [advancements] made, and that may hereafter be made, and that in the division, distribution and settlement of my said estate said advances [advancements] made, and that may hereafter be made, be treated not as advancements, but as gifts not in any manner to be accounted for by my said children and grandson, or any of them, or the issue of any of them."

The "advances" which the testator suggests that he may thereafter make are not described as other or different advances, but as "further" advances; that is advances of the same sort as those already made, and to be charged in the same way. We have seen that the "further advances" made by the testator were in fact all gifts.

The fifth clause does not mention debts or loans. Its purpose and effect is to declare that "advances made, and that may hereafter be made be treated, not as advancements but as gifts." It would have been superfluous and senseless to have said "*loans* made, and that may hereafter be made, shall not be treated as advancements," because loans never are treated as advancements. What he did was to take the precaution to say that neither past or future advancements should be treated as advancements, but as gifts outright.

The Circuit Court states the argument thus (Judge Barr's Opinion, Rec. 49):

"It is true the testator declares these advances are not to be treated as advancements, but why use this word at all unless the testator had in mind to limit such advances to such as would be advancements."

The question in the testator's mind was not between debts and gifts, but between advancements and gifts, advancements being a species of gifts which but for this clause of the will would have to be accounted for by the legatees as ademptions.

The fifth clause does not release anything or convert anything, or acquit anybody. It simply declares that something shall not be "accounted for" on a certain occasion, to wit: "in the division, distribution and settlement of my estate." This is the full force and only effect of the fifth clause. The language is appropriate as applied to advancements, for they are "accounted for" on distribution, but as applied to debts, it is senseless. Debts are "payable" when due to the executor. The testator does not say or suggest that debts shall not be paid to or collected by his executors.

The balances standing on the testator's books against his children at the time of making his will, although in form debtor balances, were in fact advancements, and not balances showing debts due to him from his children. This could have been proved by parol evidence in case of dispute, and is proved in this case, but the testator desired to put the matter at rest by a definite declaration in his will, and also to make it clear that future advancements to his children should not be regarded as ademptions of their legacies. But to say that all *debts* due the testator from his children at his death are forgiven, is another thing. If such had been the intention of the testator, instead of clause five, we would expect to find some such simple declaration as this: "I forgive all debts due to me at my death from any of my children." According to plaintiff's contention, that is what clause five amounts to. The fact that no such language is used is strong evidence that no such intention was in the testator's mind.

In Van Alstyne vs. Van Alstyne, 28 N. Y. 375, the will directed as follows: "I release and acquit all and each of my children from any charge I have made against them or either of them." The court held that this clause did not release a son from promissory notes executed to the father. Selden, J., says, at page 378:

"Without attempting to define precisely what claims would be embraced by the words used by the testator, 'any charge I have made against them, or either of them,' I am of opinion that they can not be held applicable to promissory notes. An interpretation which should make the release include notes, would of necessity extend it to all debts and liabilities of the children to the testator. If it was the intention to make the release thus general, no reason can be given why general words were not used, instead of the restrictive ones which were employed. This argument derives additional force from the use, in the previous sentence, of such general words, viz. 'all my just debts,' in the clause directing the payment of the testator's debts."

This argument is equally applicable to the will at bar, which also uses the general word "debts" in the second clause which directs that "all my just debts" be paid.

The word "advances" may doubtless be used in a particular instrument in a sense broad enough to include loans. But prima facie in a will or other instrument covering a parent's benefactions to a child, it means "advancements." In Waller vs. Todd, 3 Dana, 503, 513, the words "$1,000 advanced," used in a deed of trust from a father to his son, were held to mean, prima facie, advancements, and their meaning was restricted to that sense, because, as the court puts it at page 518, there was "no proof that the '$1,000 advanced' was a loan and not a technical advancement." In Barker vs. Comins, 110 Mass. 477, 488, the word "advances" used in a will, while not restricted to "advancements" within the meaning of the Massachusetts statute, was extended no further than "to include any benefits conferred upon his son by testator in his life-time, which he might reason-

ably consider to have been such an appropriation of his estate as, added to what he b[illegible]hed to him, *would make him equal with his other sons.*" [illegible]he first of these cases the word "advances" was restricted to technical "advancements," and in the second, while not restricted to technical "advancements" as defined by the statute (which covered only moneys entered in an account), it was not extended beyond benefactions in the nature of advancements, made with the intention of equalizing the testator's distribution of his estate among his children.

The construction claimed by the plaintiffs which makes advances, as used in the fifth clause, include debts and loans, should not be adopted, because it would involve all future business transactions between the father and any of his children in such hazard and uncertainty as to practically forbid them. For instance, if the father lent one of his children money (may be a large sum), both intending it as a loan to be repaid, and not as a gift, according to the plaintiff's construction, the accidental death of the father, a day before the payment or maturity of the loan, would convert the loan into a gift, contrary to the intention and expectation of both parties. And it would only be necessary for a child who had received money as a loan to be repaid, and not as a gift or advancement, who wished to convert the loan into a gift, to refuse payment and hold the loan open as a debt until after the father's death.

In Stokes vs. Weston, 142 N. Y. 433, it was held that "the law favors equality among the children in the distribution of estates, and in case of doubtful construction of the will, it selects that which leads to such a result."

It is important to bear in mind that the promissory notes covered by the settlement of October 16, 1890, were charged by Thos. W. Means on his books, not to the account of William Means, but to bills receivable account. In other words, they were treated as an asset, just as any other bills receivable held by him.

The Circuit Court observes on this:

"It is not to be overlooked in considering this [fifth] clause of the testator's will that the language is: 'I have made advances to my children, which are charged to them respectively on my books and I may make further advances to them. . . . which may be charged on my books to their respective accounts;' thus the testator clearly contemplated the exercise of his own will in the future and indicated the mode by which his will in that regard could be known, i. e., by the charges on his books to their respective accounts" (Opinion, Judge Barr. Rec. 50).

V.

The Circuit Court of Appeals erred in setting aside the settlement of October 16th.

The bill seeks to set aside this settlement upon the ground that it was made in fraud of the rights of the beneficiaries of the plaintiffs' trust, of which the bill alleges the administrators had notice at the time of the settlement. The Circuit Court of Appeals agrees with the Circuit Court in holding that this ground was not made out, saying in its opinion on the petition for rehearing (Rec. 624):

"This court did not find that there was any fraudulent combination between the administrators and William Means in making the settlement of October 16, 1890, to defeat the rights of the beneficiaries under the complainants' trust, and to that extent practically sustained the defendants' contention; but upon other grounds held that the complainants were entitled to recover the amount of the legacy."

In view of the rule of this court in cases where the Circuit Court of Appeals and the Circuit Court agree on an issue of fact, the question is therefore hardly open for debate.

In order to make out their case on this head the plaintiffs were obliged to show (1) that William Means had assigned or contracted to assign his interest in his father's estate to his wife and children *prior to October 16th, 1890*, and (2) that the administrators had notice or knowledge of such assignment at the time of the settlement. The plaintiffs failed to establish either fact.

THERE IS NO COMPETENT OR ADEQUATE PROOF OF AN ASSIGNMENT PRIOR TO OCTOBER 16, 1890, OF WILLIAM MEANS' INTEREST IN HIS FATHER'S ESTATE.

The plaintiffs offered no evidence to prove an assignment *prior to October 16th, 1890*, except the Greene county record, and the indefinite and ambiguous testimony of Evan Williams and H. P. Whitaker. But the Greene county record is inadmissible to prove the fact as against the defendants. For any such purpose it is *res inter alios acta*. Plaintiffs can not, as against these defendants, establish that there was a contract *prior to October 16th*, by producing proceedings in a suit to which these defendants were not parties. As against William Means, the plaintiffs might establish the fact by such evidence as they chose to offer, or by his default, or by his admission of the fact, but as against us who were not parties to the suit, who had no notice of it, and who had no right or opportunity to offer evidence or to cross-examine witnesses, the record and judgment are *wholly inadmissible* to establish that a contract was made between William Means and his family *prior to October 16, 1890*. Owings vs. Hull, 9 Pet. 607, 624; Hale vs. Finch, 104 U. S. 261, 265; Huiskamp vs. Moline Wagon Co., 121 U. S. 310, 320.

What is the other evidence? In his examination in chief Evan Williams was asked (Rec. 222):

Q. 154. Did you at any time prepare any paper purporting to be an equitable settlement in trust of the interest in expectancy of William Means in his father's estate, upon his family?

A. I did.

Q. 155. When?

A. I would rather not testify to that date until this afternoon. I need to refresh my recollection as to this. I will give you the date this afternoon, and after looking over some papers I will be able to fix the exact date.

Q. 156. For the present you can state whether it was prior or subsequent to the death of Thomas W. Means?

A. I think it was before Thomas W. Means' death.

Thereupon there was an adjournment until the afternoon session.

In the afternoon, the examination proceeded:

Q. 157. Mr. Williams, at the time of adjournment you suggested that you had some papers that would enable you to state the exact date when the first paper was drawn up as settlement. Have you been able to find the papers you expected?

A. No, sir.

That was the extent of his examination in chief. No explanation was offered of his failure to find the paper, and no further effort was made to have him prove the pretended contract between William Means and his family.

On cross-examination (Rec. 265, 266) he was asked when he first learned that there was some arrangement between William Means and his family to convey his interest in his father's estate to trustees for their benefit. He said that settlements were talked over by William Means and his children in his prosperous days, several years before the Metropolitan Bank broke. He then says that he once drew a deed which William Means signed, and being asked to produce it, he says (Rec. 266):

A. No. Can't produce it.

X-Q. 696. Have you any idea of what became of it?

A. I can not tell you.

X-Q. 697. Have you any impression?

A. I will look down in my satchel. I think it may be there with some of my papers.

He was then asked:

Q. 698. Did they accept it?

A. Substantially, they did. My recollection is, I think they wanted some formal changes. They accepted it, but wanted some formal changes. That was the way the matter stood (Rec. 266).

He was then asked why he should keep it after it was accepted

and, finding himself cornered, he evades an answer, but neither the deed nor the written contract are produced.

At pages 293, 294, he says that he was present at the conference when the contract was made at Xenia.

X-Q. 1018. Was that in writing?

A. I can not say whether it was put down at that time, but it afterwards was.

X-Q. 1019. When?

A. It is difficult for me to fix the date, but at any rate before Thomas W. Means' death, there were some papers executed and delivered.

X-Q. 1020. By whom?

A. By William Means.

X-Q. 1021. Who drew them?

A. I think Mr. Glidden, but I am not certain. Mr. Glidden, or Mr. Whittaker.

X-Q. 1022. Have you seen the papers since?

A. I do not recollect now of ever having seen them after his death.

But no papers are produced, and the fairy tale, if it needed refutation, is dispelled by the letter of the witness to J. F. Hager of October 18, 1890 (Rec. 420). The plaintiffs' claim is that the settlement between William Means and his family was in consideration of the adjustment of his wife's claim for alimony and the settlement of their family differences. But that letter shows that on October 18, 1890, she was still pressing her claim for alimony and threatening suit, and so makes it clear that at that time no adjustment had in fact been made between her and her husband. It must be remembered that William Means is one of the beneficiaries under the trust at bar, and that that letter, being in his handwriting, is competent evidence not only to contradict Evan Williams but as an admission of one of the beneficiaries. Indeed, Evan Williams testifies in this case that at the time of the settlement of October 16, "Madam (Mrs. Means) and the children were after us pretty hot" (Rec. 289).

Within two days after the settlement of October 16, 1890, this witness and trustee procured on behalf of himself and C. W. Baker mortgages conveying to them, respectively, the share and interest of William Means in the homestead property of Thomas W. Means, derived under the will and the subject of the trust, if one existed. Thereafter and during the pendency of this suit, in a suit pending in the Boyd Circuit Court, Kentucky, the liens of these mortgages were enforced, William Means appearing by answer therein, and omitting the liens so asserted. Subsequently this witness and trustee received proceeds of his mortgage lien as his own property. Securing and enforcing these liens is utterly inconsistent with the pretence that the share and interest of William Means had been previously assigned to his family (Rec. 319-20, 507, 582).

In his letter to his sister, June 15, 1891 (Rec. 460), William Means says: "The sensational slip from the Xenia Gazette, which you enclosed was no surprise, as I had already been informed of the petition filed, etc., both by Col. Williams and two friends in Yellow Springs;" and says that "you will probably learn through Col. Williams that that petition is false, as I never heard or thought of such a deed before father's death, and only through Col. W. afterwards." He says that Williams told him what was wanted of him, and he promptly refused to make it; that the whole scheme is to find a method of attacking the estate, and that the Greene county court had no jurisdiction, as he was not then a resident of the state.

In a letter of September 28th, in answer to Mrs. Adams' letter of 24th, enclosing copy of Xenia decree (Rec. 461), William Means says: "I am quite familiar with the status there. You have letter from me in June concerning the petition filed." He says that he has since learned that the decree was based entirely on the testimony of attorneys, and that Williams had sent copy of the decree.

THE CLAIM THAT THE ADMINISTRATORS HAD NOTICE PRIOR TO OCTOBER 16, 1890, OF THE PRETENDED ASSIGNMENT OF WILLIAM MEANS' INTEREST IN THE ESTATE IS DISPROVED.

But whether there was in fact a contract between William Means and his wife and children to assign his interest in his father's estate *prior to October 16*, the evidence fails to show that any notice or knowledge of such assignment or interest had been communicated at that time to the defendants. The claim is that notice was given by H. P. Whitaker to E. C. Means in March, 1890. But aside from the fact that E. C. Means had at that time no interest in the matter, being neither legatee nor administrator (for Thomas W. Means was not then dead), Mr. Whitaker's testimony shows on its face that he went to Ashland, not to give notice of a contract already made, but to get John Means' assistance to bring about an arrangement. Mr. Whitaker, who was not called at all until the close of rebuttal testimony, says:

"My sole object in going there, and the only object of my visit, was for the purpose of getting Mr. John Means to co-operate in bringing about and effecting the trust matter whereby Mr. William Means' family would have the benefit of his interest in his father's, Thomas W. Means, estate."

And again:

"I went there at the instance of the attorneys of William Means, and ourselves as attorneys of Mrs. Means and her children, after full consultation upon the subject, to, if possible, effect the execution of this trust with the consent of Mr. John Means, whom we considered to be the head of the family, and the acting agent in that matter of Thomas W. Means."

And again:

"I had no object in view other than that, and no other business except to see John Means and have a full talk upon the subject of his *co-operation in securing to the wife and children of William Means his prospective interest in his father's estate.*" (Rec. 595, 596.)

But John Means was away, and Mr. Whitaker did not see him. E. C. Means testifies that Whitaker distinctly disclaimed that any arrangement *had* been made with William Means, and said that he did not represent William Means, and did not know what William Means wanted. (Rec. 513-514.)

The burden to prove notice is upon the plaintiffs. One would expect notice in such an important matter to have been served in writing, or that some definite evidence of it would be preserved.

T. M. Adams, one of the administrators, testifies (Rec. 451) that he never heard that Mrs. Means or her children were claiming any share in the estate until the summer or fall of 1891, when, for the first time, he heard of the trust on which this suit is brought. E. C. Means, the other administrator, testifies (Rec. 499) that at the time of the settlement he had no knowledge or notice of any claim to an interest in the estate of Thomas W. Means by Mrs. Means or her children. He testifies to what took place between him and Mr. Whitaker in March, and adds, that never, until after the decree had been taken, did he hear that William Means had agreed to make a trust, or that it had been declared or existed. Mr. Hager, on whom Whitaker says he called at his March visit, testifies that he did not hear from Whitaker, William Means, Williams, or any other person, on October 4th, October 16th, or at any time prior thereto, of any claim or representation of the existence of a trust in the interest of William Means, in favor of his wife or children, and that his first information was obtained in September, 1891, from a newspaper statement that some sort of a suit had been instituted in Greene county, Ohio (Rec. 579-580).

John Means testifies, answer to Q. 1401 et seq.: I have no recollection that William Means ever wrote me that Mrs. Means was threatening to institute proceedings against him for support and for maintenance, or of having such information from him, and nothing from Mrs. Means for more than a year before my father

died. The first knowledge I had of any claim to William's share in the estate by his wife or children, or trustees for them, was in November, 1891, after the suit was commenced (Rec. 128).

Evan Williams undertakes to supply evidence of notice by intimating that it was given in Mr. Ellison's presence at the time of the funeral of Thomas W. Means, June, 1890 (Rec. 294-295). Asked if prior to signing the receipt, he mentioned to Hager, E. C. Means, or Adams, or any one in the presence of others that any interest of the children of William Means was about to be asserted or claimed against the executors, he said:

Why Mr. Hager knew it from that letter of October 20, which he says he received.

Q. 977. Which one do you mean?

A. That letter you have been asking about and you produced here the other day (Rec. 290).

3. Evan Williams' letter of October 18, 1890, to Mr. Hager (Rec. 420), is a complete answer to the claim that the administrators agreed to pay $25,000 in consideration of William Means' release of October 16th. T. M. Adams (Rec. 441), E. C. Means (Rec. 498, 499, 508, 509, 510-513, 514, 515), and J. F. Hager (Rec. 583) all deny that there was any such promise. The claim rests altogether upon the unsupported and discredited testimony of Evan Williams.

VI.

The ground upon which the Circuit Court of Appeals set aside the settlement of October 16th discussed.

The Circuit Court of Appeals, although finding against the plaintiffs on the case made by their bill, with respect to the settlement of October 16, nevertheless set it aside, upon the ground that the notes settled, having already been cancelled, upon a true construction of the will, there was in fact no debt to settle and consequently no consideration for the settlement, and that it

was therefore, as against William Means, constructively fraudulent, because made with administrators who stood in a fiduciary relation to him.

1. The *bill* does not allege that the settlement was a fraud upon William Means, but on the contrary, that it was the result of "a fraudulent combination *with* William Means," for the purpose of defeating the rights of the *plaintiffs*, to whom the bill alleges that William Means had theretofore assigned his legacy, and of which assignment the bill insists that the defendants had notice at and prior to the time of the settlement, "thereby intending to defeat the just claims of *these trustees* and their beneficiaries."

But instead of finding that the defendants entered into a fraudulent combination *with* William Means to defeat the *plaintiffs*, the Circuit Court of Appeals bases its decree upon the ground that the defendants took advantage of *William Means* and committed a fraud *upon him*. But that is not the case which the defendants were called upon by the bill to answer.

The rule is fundamental (because essential to the safe and orderly administration of justice), that a plaintiff is confined to the case made by his bill. This is especially true in cases of fraud. We do not mean that every detail of the fraud must be proved as alleged, but the plaintiff must state specifically the *nature* of the fraud upon which he relies and must establish *that* fraud to entitle him to relief. Otherwise great injustice may be done the defendant, for he is not called upon to meet any other than the fraud alleged. This case is a striking illustration. The Circuit Court of Appeals says that the circumstances of the transaction of October 16th, raise certain presumptions of unfairness *towards William Means*, and of advantage over *him*, which the defendants were bound to repel; which is true, if the defendants had been charged in the bill with taking advantage of William Means, or of committing a fraud upon *him*. But how

could they be expected to repel such presumption, when the distinct allegation of the bill is, not that they had defrauded William Means, but that they had conspired *with* William Means to defraud others, of whose rights they had notice. And how could the Circuit Court of Appeals properly convict the Circuit Court of error in failing to grant relief upon a ground which is not only not made by the bill, but which is inconsistent with the bill?

In Harrison vs. Nixon, 9 Pet. 483, 503, Mr. Justice Story said:

"Every bill must contain in itself sufficient matters of fact, per se, to maintain the case of the plaintiff, so that the same may be put in issue by the answer, and established by the proofs. The proofs must be according to the allegations of the parties; and if the proofs go to matters not within the allegations, the court can not judicially act upon them as a ground for its decision, for the pleadings do not put them in contestation. The allegata and the probata must reciprocally meet and conform to each other."

In Boone vs. Chiles, 10 Pet. 177, 209, Mr. Justice Baldwin said:

"A party is not allowed to state one case in a bill or answer and make out a different one by proof. The allegata and probata must agree. The latter must support the former."

In Foster vs. Goddard, 1 Black, 506, 518, Mr. Justice Swayne said:

"In equity proceedings the proofs and allegations must agree. A party can no more succeed upon a case proved, but not alleged, than upon a case alleged, but not proved."

In Grosholz vs. Newman, 21 Wall. 481, 488, Chief Justice Chase said:

"The recovery must be had upon the case made by the pleadings or not at all."

In Bartmess vs. Fuller, 170 Ill. 193, McGruder, J., said:

"It is well settled that a complainant must recover on the case made by his bill. He can not be permitted to state one case in

his bill, and make out a different case by his proofs. Allegations and proofs must correspond. Even though a good case may appear in evidence, yet, if it differs from the one stated in the bill, the bill will be dismissed."

Adams vs. Gill, 158 Ill. 190, was a bill to reform a deed, upon the ground, as alleged in the bill, that the mistake arose through the mere oversight of the attorney who drew the deed. The Supreme Court of Illinois reversed the decree of the Circuit Court, entered upon the basis that the deed was improperly drawn through fraudulent design. Wilkin, C. J., said:

"In other words, the complainants set forth one case in their bill, and attempted to prove another on the hearing, placing their right to relief on entirely new ground. In McKay vs. Bissett, 5 Gilman, 505, it was said: 'A complainant must recover on the case made by his bill. He is not permitted to state one case in the bill and make out a different one in proof. The allegations and proof must correspond; the latter must support, and not be inconsistent with, the former. Although a good case may appear in the evidence, yet, if it be variant from the one stated in the bill, the bill will be dismissed. The defendant has the right to answer and contest the case on which the complainant claims relief (citing cases). If the evidence makes a case variant from the one made in the bill, no decree should pass other than to dismiss the bill.' It is well said in Kellogg vs. Moore, 97 Ill. 287: 'The chief object of written pleadings is to distinctly inform the adverse party of the facts relied on for a recovery or a defense, so that he may admit or deny them, or question their legal sufficiency by a demurrer, exceptions or otherwise, as he may be advised by his counsel; and also to inform the court of the real points of difference between the parties to the suit, so as to enable it to intelligently pass upon and determine their respective rights. But if parties are not held bound by their pleadings, it is clear the very object of them would not only be defeated, but they would be used by unscrupulous litigants for the express purpose of misleading their adversary, and neither the court nor the parties could ever know to a certainty the points of difference till all the evidence is in, and hence no one could intelligently prepare for trial.'"

In Park vs. Lide, 90 Ala. 246, a wife's land having been sold under a mortgage, was bid in by her husband's brother, who afterwards conveyed to him. A bill was filed by the wife's heirs charging that the husband had paid the debt with the wife's money, and that the foreclosure was collusive. There being a failure to prove that the mortgage was not a valid and subsisting lien, it was held that relief could not be granted, on the theory that the husband had purchased in trust for his wife, entitling the heirs to compel a conveyance on repayment of his expenditures in removing the incumbrance. The court said:

"The allegations, in other words, are not sufficient to authorize the relief granted, nor is the proof sufficient to support the relief prayed. This state of things involves a variance between the averments and the proof which is fatal to the decree; the rule in this respect being especially stringent in those cases in which, like the present, the complainant relies upon the fraud of his adversary." Citing, among others, 1 Daniels, Ch. Pr. 36 et seq. 383; Wilde vs. Gibson, 1 H. L. Cas. 605; Glascott vs. Lang, 2 Phil. Ch. 310, 322; Story, Eq. Pl. Sec. 42, and note.

Eyre vs. Potter, 15 How. 42, was a bill filed by a widow to set aside a son's purchase from her on the ground of actual fraud and misrepresentation. At the hearing, she insisted that if active fraud had not been shown, the conveyance ought to be set aside on the ground that the son stood in a fiduciary relation to her, which forbid his purchasing at a price said to be grossly inadequate. To which the court answered:

"Although cases of constructive fraud are equally cognizable, by a court of equity, with cases of direct or positive fraud, yet the two classes of cases would be met by a defendant in a very different manner. It seems to be an established doctrine of a court of equity, that when the bill sets up a case of actual fraud, and makes that the ground of the prayer for relief, the plaintiff will not be entitled to a decree, by establishing some of the facts quite independent of fraud, but which might of themselves create a case under a totally distinct head of equity from that which would be applicable to the case of fraud originally stated." (15 How. 56.)

So at bar, the plaintiffs having charged a fraudulent combination between the defendants *and* William Means to defraud the *plaintiffs*, can not recover upon the ground that the transaction, for want or insufficiency of consideration, or because of the fiduciary relation of the defendants, was a fraud *upon William Means*, or that he made the settlement to his own prejudice, under mistake of law or misunderstanding of his rights. That is not the case alleged in the bill. It is not the case the defendants were called upon to answer, or to meet with proof. It is not the case that was before the Circuit Court, or the Circuit Court of Appeals, or which is before this Court. The plaintiffs' case must be found in their *bill*, and not in the brief of their counsel.

The fundamental rule is fairly and accurately stated thus in Kerr on Fraud and Mistake (Am. Ed.), 365:

"The fraud alleged must be set forth specifically in particular and in detail, so that the person against whom it is charged may have the opportunity of knowing what he has to meet and of shaping his defence accordingly."

And even if we accept the view of the Circuit Court of Appeals that the bill was one to recover a legacy, and that the settlement of October 16, was matter of defense, that defense was set up in the answer, and the plaintiffs, if they wished to attack it as a fraud upon *William Means*, were bound to charge in their bill the fraud upon which they relied. This they did and they are confined to the charge so made. Assuming the bill to be one simply to recover a legacy, its allegations with respect to the settlement of October 16, must be treated as the plaintiffs' replication to the answer. But the plaintiffs can no more allege one replication and prove another and different replication, than they can allege one ground of relief and seek to recover upon a different ground. The rule which requires the proofs to correspond to the pleadings applies as well to replications as to bills proper.

The following statement is taken from Langdell's Summary of Equity Pleading (2d Ed.):

"According to the original system of equity pleading, it was necessary for the plaintiff to file a replication in the following cases and for the following purposes:

"First, if the defendant set up one or more affirmative defences to which the plaintiff in turn had an affirmative answer, he was required to set this up in a replication" (p. 92).

After pointing out that special replications were abolished at an early day, the learned author says:

"Instead, however, of simply lopping off all pleadings subsequent to the answer, and leaving the case to be further developed by evidence without pleadings, the court of chancery preserved all the principles of the system intact, by requiring the plaintiff to insert in his bill whatever would formerly have appeared in a replication, and by requiring the defendant to put in his answer, whatever would formerly have been contained in a rejoinder. This object was accomplished by the plaintiff's amending his bill, if necessary; and then the defendant was required to answer the amendments. Or, if the plaintiff could anticipate what the defendant would set up in his answer, he could expedite his cause by inserting his replication in his bill in the first instance" (p. 94).

"If either plaintiff or defendant fails to set forth any affirmative matter in the bill or answer respectively, the consequence will be that he will not be permitted to prove it, no matter at how late a stage of a regular system of pleading it would properly have appeared" (p. 94).

2. But suppose the case decided by the Circuit Court of Appeals had been made in the bill. The settlement of October 16, 1890, was an adjustment of a claim then asserted by the administrators against William Means. The Circuit Court of Appeals was of opinion that upon a proper construction of the fifth clause of the will, the notes settled had in fact been forgiven, and that there was therefore no consideration for the settlement.

But to sustain a settlement it is not necessary that the claim compromised should have been good in fact. In Callisher vs. Bischoffsheim, L. R. 5 Q. B. 449, which is the leading English

case, the defendant being sued on a promise made in consideration of the compromise of a claim, set up that, at the time of the compromise agreement, nothing was in fact due to the plaintiff. But the court sustained a demurrer to the plea.

Blackburn, J., said:

"If we are to infer that the plaintiff believed that some money was due to him, his claim was honest, and the compromise of that claim would be binding, and would form a good consideration, although the plaintiff, if he had prosecuted his original claim, would have been defeated."

Cockburn, C. J., said:

"If the defendant's contention were adopted, it would result that in no case of a doubtful claim could a compromise be enforced. Every day a compromise is effected on the ground that the party making it has a chance of succeeding in it, and if he bona fide believes he has a fair chance of success, he has a reasonable ground for suing, and his forbearance to sue will constitute a good consideration. * * *

"It would be another matter if a person made a claim which he knew to be unfounded, and, by a compromise, derived an advantage under it; in that case his conduct would be fraudulent."

In Smith vs. Farra, 21 Oregon 395, where there is an extensive review of the cases, English and American, the defendant was held to a compromise by which he agreed to pay $700 in settlement of a claim for breach of covenant of title and warranty of land, although his real liability (the purchase price with interest), was less than $400.

In Stewart vs. Stewart (6 Cl. & F. 911, 967), Lord Chancellor Cottenham quotes with approval the following words of Lord Hardwicke, in which he in turn was only repeating Lord Macclesfield:

"An agreement entered into upon a supposition of a right, or of a doubtful right, though it after comes out that the right was on the other side, shall be binding, and the right shall not prevail against the agreement of the parties; for the right must always be on the one side or the other, and therefore the compromise of a doubtful right is a sufficient foundation for an agreement."

Grasselli vs. Lowden, 11 Ohio St. 349, 356, was a suit to enforce an agreement made in compromise of a claim. The defendant set up that the claim compromised was really not good, and that there was therefore no consideration for the compromise. The court said:

"It is obvious, that there was then a controversy between the parties, of which the issue was regarded by both as at least doubtful, whatever may be the present opinion of Grasselli or of his counsel; and this constitutes a sufficient consideration for the covenant."

"If the solemn compromise of the parties is made to depend on the question whether the parties have so settled the dispute as the law would have done, then it may be truly said that a compromise is an unavailing, idle act, which questions even the power of the parties to bind themselves." Fisher vs. May, 2 Bibb, 448.

Union Bank of Georgetown vs. Geary, 5 Pet. 99, involved an agreement under which the endorser of a note had waived all defence and permitted a judgment to go against her, upon the promise of the plaintiff that it would issue an execution immediately against the maker, who was represented to have property sufficient to satisfy the judgment. The plaintiff, having failed to keep its agreement by issuing execution, sought to escape from the consequences of its breach by insisting that the indorser had in fact no good defence and that her agreement to waive defence and suffer judgment was therefore no consideration. But this court held that the consideration was sufficient, even though one of its own later decisions showed that the defence of the endorser (which alleged the insufficiency of a demand made on the fourth instead of the third day of grace) could not have prevailed.

Mr. Justice Thompson said:

"It is unnecessary to examine whether this defence would have been available or not. The validity of the contract did not depend upon that question. It is enough that the bank considered

it a doubtful question, and that they supposed they were gaining some benefit by foreclosing all enquiry on the subject. . . . To permit a subsequent judicial decision on this point in their favor, as having a retrospective effect, so as to annul a settlement or agreement made by them under a different state of things, would be sanctioning *a most mischievous principle*."

But it is just this "most mischievous principle" that the Circuit Court of Appeals sanctioned when it permitted William Means or his assigns to repudiate the settlement of October 16th, because that Court was of opinion that the claim of the administrators, which he then settled, could not have prevailed if contested.

3. It is of course otherwise if the person getting the benefit of a settlement knows at the time that his claim is unfounded. In that case, to use the language of Cockburn, C. J., in Callisher vs. Bischoffsheim, "his conduct would be fraudulent." But there is no ground either alleged or proved for such an imputation against the defendants. The Circuit Court of Appeals, to be sure, held that William Means' notes had in fact been forgiven by the fifth clause of the will, but the circumstance that the Circuit Court, after full hearing and upon great deliberation, held otherwise, is of itself a sufficient answer to any suggestion that the administrators were guilty of fraud or bad faith in believing and insisting that the notes were valid claims which they, as administrators, were entitled to collect from William Means. In Crescent Live Stock Co. vs. Butcher's Union, 120 U. S. 141, it was held that a judgment in favor of a plaintiff in a circuit court of the United States is conclusive proof of probable cause, although contrary to a former decision of a state court and although reversed subsequently by the Supreme Court of the United States.

Moreover, whether the notes were forgiven by the will depended upon the construction of the fifth clause, which was peculiarly a question of law upon which the administrators (being

laymen) were obliged to rely on the advice of counsel, and the court will not assume that the counsel who advised the administrators that the notes were valid and enforceable debts of the estate against William Means, acted in bad faith.

4. It seems clear therefore that the Circuit Court of Appeals was not warranted in setting aside the settlement of October 16th, simply because that court was of opinion that the administrators could not have succeeded if they had sued William Means on the notes, and that therefore the settlement, in the language of the opinion, "amounted simply to a gift to the administrators for the benefit of the other legatees." That is what happens every time an alleged debtor settles a claim which could not have prevailed. It is precisely what happened in Callisher vs. Bischoffsheim (where the demurrer to the plea admitted that the debt compromised was in fact no debt), and in Union Bank of Georgetown vs. Geary, where this court subsequently held that the defence compromised and withdrawn was, in truth, no defence.

The Circuit Court of Appeals says in its opinion that "no harm will come to the interests of others" if the settlement is set aside, evidently meaning that all parties will be restored to their status quo. But is that justification for setting a settlement aside? Is a settlement to stand only when the parties have settled the dispute as the law would have done?

The general policy of the law is quite to the contrary, being fairly stated in 1 Perry on Trusts, Sec. 185, with copious citation of authorities, as follows:

"When a conveyance is made to compromise claims which the parties deem doubtful, and especially if the conveyance has for its object the settlement of family controversies, courts will support it if possible, although founded in ignorance or mistake of facts, as well as of law; provided no fraud has been used to mislead and deceive the party executing the conveyance.'

5. But what is there to justify the action of the Circuit Court of Appeals in cancelling the settlement of October 16th, beyond the fact that, in the view of that court, the debt asserted by the administrators, and settled by William Means, under the advice of counsel, was in fact no debt?

The only other ground suggested by the court is that the administrators sustained the fiduciary relation of trustee to William Means. But *in respect of the settlement of a debt* asserted by administrators against a legatee, they do not sustain a fiduciary relation towards the legatee, but on the contrary a hostile position. No one but the administrator is competent to assert the claim. He alone represents the estate. If the claim is to be prosecuted he must sue and be plaintiff against the legatee as defendant. The assertion of a claim of *debt* in behalf of an estate against a legatee is necessarily, and in the nature of things, the assumption of a hostile position on the part of the administrator towards the legatee. Even in the case of a solicitor, whose fiduciary relation to his clients awakens the most jealous scrutiny of a court of equity, the rule is held not to apply when the solicitor is in the hostile attitude of a pressing creditor. Johnson vs. Fesemeyer, 3 D. & J. 13.

If the administrators had undertaken to purchase William Means' legacy, either for themselves or others, they would have gone outside of their duty and violated the rule which forbids a trustee from dealing with his cestui que trust. But that is not what the administrators did. They did not purchase or undertake to purchase or otherwise acquire William Means' legacy, either for themselves or for others. What they did was to prefer a claim of *debt* against William Means and to insist that it be recognized and settled. This was strictly in the line of their duty as administrators, assuming, as they then supposed, that the debt was a valid claim (and whether it was or not could only be determined by suit or settlement). The debt being recognized and settled it became as matter of law an offset against the legacy.

But the settlement of the debt had no other connection with the legacy. In respect of the claim of debt thus made by the administrators against Wm. Means upon his notes, they occupied no fiduciary relation towards him, but on the contrary a hostile position, openly and avowedly hostile. They represented an estate insisting that he was indebted to it. There was no confidence reposed and betrayed and no room for the operation of the rule which forbids dealings between trustee and cestui que trust. That is a rule of public policy intended to prevent transactions. It can not apply to a transaction in the line of the duty of an administrator. The circumstance that a debtor is also a legatee does not disqualify the administrator, or make him the legatee's trustee in respect of the debt.

We utterly deny the proposition upon which the decision of the Circuit Court of Appeals is based, that an administrator, *in respect of a debt asserted against a legatee*, is trustee for the legatee, especially when he deals at arm's length and the legatee is advised by independent counsel. We submit that the settlement of a claim under such circumstances has the same force and effect as if the alleged debtor were not also a legatee.

6. The Circuit Court of Appeals wholly ignored the fact (ordinarily supposed to be sufficient to sustain a transaction between trustee and cestui que trust, even where the trustee is dealing for his own benefit) that William Means acted under the advice of independent counsel (Rec. 349, 487, 488, 436, 439).

7. As bearing upon the suggestions in the opinion of the Circuit Court of Appeals that the settlement of October 16th was "induced" or "procured" by the administrators, or that they exercised undue "activity" in bringing it about, we submit the following as an entirely fair statement of the evidence.

The conference which resulted in the settlement was not invited by the administrators, but, on the contrary, by William

Means and his attorneys. No one testifies that the conference was proposed by the administrators. They both testify that it was not proposed by them (Rec. 475, 488).

The sequence of events is as follows:

On June 16th, eight days after the testator's death (and not before, as erroneously stated in the opinion of the Circuit Court of Appeals), William Means delivered his order of that date (Rec. 434) to T. M. Adams and E. C. Means, who had not yet qualified as administrators, although it was doubtless understood at the time that they were to be appointed. They were appointed on July 28th, but did not qualify by giving bond until July 29th. On that day (and not on the 28th, as erroneously stated in the opinion of the Circuit Court of Appeals) they made the endorsement which now appears upon the paper of June 16th (Rec. 578).

It is true, as stated in the opinion, that William Means, on July 28th, delivered to E. C. Means and Thos. M. Adams, before they had given bond or qualified, a notice of revocation of his paper of June 16th. But he accompanied such revocation with the following paper, which is not noticed in the opinion of the Circuit Court of Appeals:

Ashland, Ky., July 28, 1890.

Mr. E. Cook Means and Thomas M. Adams.

Gentlemen:

Mr. William Means has, after due consideration, *with full knowledge as to his legal rights*, notified you that he revoked a certain paper writing dated June 16, 1890, and that he withdrew all authority given by such paper.

Notwithstanding this revocation we desire to say on behalf of Wm. Means that he is ready and willing at any time to come to a full and amicable consideration and adjustment of his relations to the estate of his father, and either he or we as his counsel will be pleased to confer with you on the subject at any time.

Yours very truly,

Jordan & Jordan,

Evan F. Williams.

(Rec. 435-6.)

One of the signers (now deceased) was one of the most prominent, experienced, astute and aggressive members of the Ohio bar. The other, also a member of the bar, is one of the present plaintiffs.

The suggestion of conference made in the foregoing letter of William Means' attorneys resulted in nothing until October 4th, when William Means appeared at Ashland, accompanied by Evan Williams, one of his attorneys. There is not a syllable of testimony to show that this was in pursuance of any suggestion or invitation of the administrators, and they testify that they had no part in bringing about the conference of that day. Thos. M. Adams (Rec. 475), John F. Hager (Rec. 576), E. C. Means (Rec. 488), and Evan F. Williams (Rec. 288-9), testify to what took place on that occasion. They are the only witnesses upon the subject. Their testimony agrees that William Means and his attorney, Evan Williams, stated the object of their visit to be the settlement of William Means' debt to his father's estate, and to pay the estate what he owed it. They left requesting the account to be made up, and promising to return that night. The administrators did make up the account. Neither William Means nor his attorney returned that night, or, so far as appears, had any further communication with the administrators until October 16th, when William Means appeared at Ashland with Evan F. Williams and another attorney, C. W. Baker (Rec. 349, 350-1-2-3). The settlement of October 16th, resulted from that conference, which was participated in by William Means and both of his attorneys on the one side, and by T. M. Adams and E. C. Means' administrators and their attorney, John F. Hager, on the other side. There is no suggestion in pleading or proof of concealment, false representation, or other misconduct on the part of the administrators or their attorney, nor evidence of any influence exercised or sought to be exercised by either of them over William Means or his attorneys.

John Means took no part whatever in the settlement of October 16th. The record shows that he left Ashland prior to his father's death, and did not return until the following December. (Rec. 310, 127.)

If the administrators then knew or believed that the notes were not valid claims against William Means, there would be justification for the strictures of the Circuit Court of Appeals, but the court must place itself in the situation of the parties at the time. The administrators were advised by counsel that the notes were valid claims agaisnt William Means. They had been charged to the administrators in the inventory, with the knowledge and approval of William Means, as assets of the estate (Rec. 549-50).

Upon that assumption, it was the duty of the administrators to collect them, and they would have been guilty of negligence in failing to take proper steps to enforce payment or to secure the right of retainer against William Means, legatee.

The Circuit Court of Appeals says that the diligence of the administrators "excites suspicion that they were conscious of standing on dubious ground." They and their counsel undoubtedly did have doubt of their right to offset the debt against the legacy, and their activity was with a view to making the right of retainer certain. The case of Brown's Administrators vs. Mattingly, 91 Ky. 275, establishing such right of retainer for the first time in Kentucky, had not then been decided. The general right to offset the debt of a legatee against his legacy is not without doubt. Even the Circuit Court of Appeals seems to have thought the question sufficiently doubtful to justify the citation of many cases in its opinion in support of the proposition Rec. 613. There is, therefore, we submit, no ground to suspect that the administrators or their attorneys were "conscious of standing on dubious ground" on the question of *debt* or *no debt*, simply because they took care to compute and adjust the amount of the debt, and to secure the right of offset and retainer. To that extent alone their activity extended.

VII.

The Biil is not in fact one simply to recover a legacy. As such it can not be maintained because premature.

The Circuit Court of Appeals, although ordering a decree setting aside the settlement of October 16 (which seems to imply that the bill was one for such affirmative relief) took the position (when confronted with the suggestion on the petition for rehearing, that the case which they had decided was not the case made by the bill), that the suit was really one for the recovery of a legacy.

Such, we submit, is not the nature or scope of the bill. Nor can it be maintained as such, being premature.

The will provides that no final settlement can in any event be required before three years after the testator's decease (Item 7). The bill was filed before that time. In In-re Spencer (16 R. I. 25, 31) it was held that where a testator had declared that his executors "should have five years in which to settle his estate," a legatee could not maintain a suit for his legacy within that time.

VIII.

If Williams Means' notes evidenced obligations not canceled by the fifth clause of the will, the administrators are entitled to offset them against his legacy notwithstanding the assignment of his interest in his father's estate, under which the plaintiffs claim.

It seems to be settled in Kentucky, in accordance with the general rule of law on the subject, that an executor may set off a legatee's debt to the estate against the legacy, and that such right of set off can not be defeated by an assignment of the legacy. Brown's Adm'r vs. Mattingly, 91 Ky. 275; Ball vs. Townsend Littell's Sel. Ca's. 325; Jones vs. Taylor, 97 Ky. 201; Blackler vs. Boot, 114 Mass. 24; Howland vs. Heckscher, 3 Sand Ch. 519; Strong's Ex'r vs. Bass, 35 Pa. St. 333; Waterman on Set Off, secs. 189, 190, and cases cited; 2 Woerner on American Law of Administration, sec. 564, and cases cited.

We respectfully submit:

1. That William Means is not entitled to a double portion, but that his *debt* of $136,035.75 to his father's estate should be deducted from his legacy.

2. That the question whether he was entitled to such deduction was settled by an agreement between the administrators and himself, acting under the advice of counsel, and that no ground is presented by the bill or sustained by the proof for setting that settlement aside.

3. That the decree of the Circuit Court of Appeals should be reversed and the case remanded to the Circuit Court with directions to reinstate its decree.

LAWRENCE MAXWELL, JR.

JULIUS L. ANDERSON,
JOHN F. HAGER,
Of Counsel.

Chronological Index of the Correspondence Between John Means and William Means.

			Page of Record.
1880.	September 4.	John to William	391
	" 8.	William to John	392
1884.	May 14.	John to William	391
	" 16.	William to John	391
1888.	February 11.	William to John	356
	" 13.	John to William	394
	" 15.	William to John, Ex. No. 6	115
	" 16.	John to William	395
	" 20.	John to William, Ex. No. 4	360
	" 21.	William to John, No. 7	115
	" 21.	John to William	107
	" 23.	William to John, No. 8	116
	" 23.	William to T. W. M.	462
	" 23.	John to William	361
	" 10, 11, 18.	William to John, 3 receipts on account current	357, 358
	" 24.	John to William	362
	March 5.	John to William	362
	" 6.	William to John	191
	" 9.	John to William	363
	" 15.	William to John, No. 9	116
	" 16.	William to John, No. 40	189
	" 21.	John to William	365
	" 26.	John to William	366
	" 27.	William to John	188
	April 2.	John to William	366
	" 3.	William to John	181
	" 4.	John to William	367
	" 16.	William to John, Part 175	135, 197
	May 1.	William to John, No. 46	191
	" 7.	John to William	367
	" 14.	William to John	192
	" 26.	William to John, No. 34	186
	" 28.	John to William	368
	June 1.	William to John, No. 37	187
	" 14.	William to John, No. 13	119
	" 16.	John to William	368
	" 23.	William to John, No. 48	193

			Page of Record.
1888.	July 12.	William to John, No. 19, Labrot	130
	" 13.	John to William	369
	" 17.	William to John	119
	" 18.	John to William	368
	" 23.	John to William	370
	" 27.	William to John	120
	" 28.	John to William	370
	August 1.	John to William	371
	" 1.	William to John	182
	" 5.	William to John	193
	" 6.	John to William	371
	" 6.	John to William	372
	" 8.	John to William	372
	" 9.	William to John, No. 50	194
	" 15.	William to John, No. 51	194
	" 16.	John to William	384
	September 12.	John to William	384
	" 17.	William to John, No. 52	195
	" 19.	John to William	385
	" 22.	John to William	384
	" 27.	John to William, Statement of William's apc., T. W. M.	396
	October 1.	John to William	373
	" 4.	William to John, No. 53	195
	" 4.	John to William	385
	" 10.	John to William	373
	" 15.	John to William	165
	" 16.	William to John, No. 54	195
	" 20.	John to William	374
	" 22.	William to John, No. 36	187
	" 24.	William to John, No. 35	186
	" 24.	John to William	375
	" 25.	William to John, No. 55	196
	" 29.	John to William	374
	" 29.	William to John	182
	November 3.	John to William	394
	" 16.	John to William	375
	" 19.	John to William	376
	" 22.	William to John, No. 56	196
	" 28.	John to William	376
	December 3.	John to William	377
	" 7.	William to John	182
1889.	April 2, 3.	William to John, No. 32	183
	" 18.	John to William	377
	May 7.	William to John, No. 41	189
	" 8.	John to William	378
	" 10.	John to William	380
	" 25.	John to William	382
	June 1.	William to John, No. 33	185
	" 8.	John to William	381
	" 26.	John to William	382
	July 2.	William to John	189
	" 9.	John to William	383

U. S. Sup. Ct. 173.

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Brief of Harmon, Glidden & Little 815

Supreme Court of the United States

Filed May 24, 1897

October Term, 1896.

Thomas M. Adams, and E. C. Means, Executors, Etc.,
Appellants,

vs.

Benjamin R. Cowen and Others, Trustees,
Appellees.

Brief Against Petition for Writ of Certiorari.

JUDSON HARMON,
of Counsel Appellants.

J. J. GLIDDEN,
H. P. WHITTAKER,
JOHN LITTLE,
of Counsel.

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Appellees.

BRIEF AGAINST PETITION FOR WRIT OF CERTIORARI.

I.

The brief in support of the petition pays no heed to the settled rule and practice of this court with respect to its exercise of the power of review by certiorari.

Lau Ow Bew, Petitioner, 141 U. S. 583, 144 Id. 47.
In re Woods, 143 U. S. 202.

American Construction Co., vs. Jacksonville, Tampa & Key West Ry. Co., 148 U. S. 372.

In the case last named the court, by Mr. Justice Gray, said (p. 383) that review by this court by certiorari "has been held to be a branch of its jurisdiction which should be exercised sparingly and with great caution, and only in cases of peculiar gravity and general importance, or in order to secure uniformity of decision.

The granting of the petition would involve a radical change in the practice and policy of the court. No reason is stated why this case should be reviewed, and none exists which would not apply to every contested case in which the amount involved is substantial.

II.

The only showing attempted in behalf of the petition is that the Circuit Court of Appeals erred in its conclusions.

While, for the reason just stated, we do not think this question now open for discussion, yet the judgment was so just and rightful that we are unwilling to appear reluctant to defend it.

The case is not stated in the brief either fully or fairly. The appellees are styled "persons claiming to be assignees of William Means." They are in fact merely trustees holding the interest of William Means in his father's estate for the benefit of his wife and children. These "persons" have and claim no interest of their own whatever.

Item 4 of the will (Rec. 47) made equal division among the children of the testator. It is plain from this and from Item 5, quoted in the brief, that the equal provision, which the testator had in view, had reference only to distribution under the will, without regard to what might have been received from him when the will was drawn or might be received thereafter. As the Circuit Court of Appeals said in its unanimous opinion by Judge Severens:

> "The language could hardly have been made plainer to indicate that the leading purpose of the testator was that the property which he should leave at his death, irrespective of what he might have advanced to them during his life, should be divided among the five persons named."

78 F. R. at p. 546.

It is not disputed that both before and after the making of the will all of the children of the testator had received from him large amounts in money and property, all of which was charged to them, as an indebtedness, by the testator on his books of account (Rec. 90). William received what he got in the same way and with the same legal result as in case of all the others. On one occasion

the testator divided a large amount equally among his children expressly as an advancement. On all other occasions what they received from him made them his debtors, but the effect of the 5th item was to discharge those debts so as to make an equal division of his property at his death without regard to such debts. Item 5 uses both words, "advances" and "advancements." The Circuit Court of Appeals said (p. 546):

> "He uses the word 'advances' in the sense of 'furnishing,' 'supplying,' in advance of the final distribution of his will. It is absurd to suppose that he used the word as equivalent to the technical word 'advancements,' for, in the face of the disposition to be made of his property at his death, he must have known that if, in the meantime, he should bestow property upon them, whether by way of gift or loan, it would not be an 'advancement,' as that word is used in legal phraseology. In the nature of things, it was not possible for him to have intended by 'advances' the same thing as 'advancements', for that involves an intention, at the time of supplying the money, that it shall be such. Besides, he uses that term indiscriminately to apply to what he had given and charged to his children before the making of the will, as well as to what he might thereafter charge them. The legacies of the equal provision were to be 'in addition' to such advances, and how could the testator be supposed to have used the word 'advances' in its technical sense, which involves a satisfaction or diminution of the legacy *pro tanto*, when he expressly declared that the legacies should be in addition to them? The testator intended that they should not be eaten away by what he should be moved to do for his children during his life. That will becomes operative upon the death of the testator. What this will then meant was this: Whatever the testator has helped his legatees to before this time, when distribution has finally come, though then a debt, is now forgiven. It is not in any manner to be accounted

for.' The equal distribution now to be made of what remains is 'in addition to said advances.' For the lack of a more suitable word, we have frequently used this word in this opinion to express a similar meaning to that for which the testator employed it."

It is not true, therefore, as stated in the brief, that under the construction of the Court of Appeals William Means gets a "double portion." His great and peculiar misfortunes caused his father to supply him with greater sums of money than he supplied to any other child, except John and perhaps Mrs. Culbertson. But the father made no change in his will on this account, and under it the trustees will receive exactly the same on account of William's share as the others get for their shares. It is attempted to figure out the double portion by excluding from the will, or denying to William, the provisions of Item 5, which as plainly contemplated possible inequality in the total amounts received during the life time of the testator as they provided for equality in distribution under the will. William derives no greater benefit from the operation of Item 5 of the will under the decision of the Court of Appeals than does his brother John.

Counsel states, as the basis of his argument, that "the fifth clause of the will does not cancel debts due from children to the testator, but that it relates simply to advancements." If that were true, then that clause would have no effect whatever, because every item charged in the accounts with his children referred to by the testator was a *debt*, so charged and treated by him, while the only *advancement* he made was *credited* to them in those accounts. (Record, p. 90–1.)

As the Court of Appeals said (p. 548):

> "Thomas W. Means was a man of strong character and fixed adherence to his plans in life. He was also a man of strong paternal affections, and had been accustomed to extend his assistance and support to all his children by employing his large means on every occasion of their need. It is incredible that he should have changed his attitude when William's

calamities came upon him. The latter had gained considerable distinction in life, and no doubt he felt sensible of the credit to the family which his son's attainments reflected. He was the character of man who would be likely to have taken pride in them. He did not then know what, if any, moral delinquency there was in William's transactions. He knew that his son was in financial distress, and he came forward, as was his wont, to help him out and re-establish him on solid ground. We are fully persuaded that we do him exact justice in refusing to believe that he then had a thought of inaugurating a new plan of dealing with William's expectancy. And if he did not then have such purpose, there is nothing in the evidence which would justify the belief that he at any time afterwards formed one."

The notes of William Means to his father, by which the executors undertook to wipe out his legacy, were not given at the time he received the sums named therein. They were obtained from him by reason of an afterthought of his brother John for the declared purpose on his part of saving William's interest from possible attacks by creditors. (Record, 280, Q. 115, 116, 117, 119; also, Record, p. 142, letter of Feb. 20; Record, p. 151, letter of Feb. 21, and Record, p. 278, letter of Feb. 24). It was afterward concluded by John and those who thereafter became executors that what William had so received ought to be charged against his future share of the estate, and thereupon, as was said in the opinion below:

"The defendants have exhibited extraordinary diligence in obtaining from William repeated renunciation of his claims. Some days before the testator's death they obtained one such, and then, upon the day of their appointment, they solemnly indorsed upon the instrument their acceptance of the same as administrators, notwithstanding he had in the meantime revoked it; and on later occasions they obtained like concessions, culminating in the receipt and order of October 16, 1890, now in controversy. Such activity

on the part of an administrator executing a will in procuring the surrender of one who, by its terms, is a legatee, excites suspicion that they were conscious of standing on dubious ground, and ill comports with the duties of one standing in the place of a trustee for all the parties in interest. It is a violation of his duty when an executor becomes a partisan for one legatee and sacrifices the other," etc. (P. 551.)

William's condition and the duties of the executors, who were both grandchildren of the testator, are thus described by the court (p. 552):

"William had lost all his property, and was in very straightened circumstances. Since his downfall he has been broken in spirit and wavering in his purposes. He seems at times to have been impressed that the administrators had a moral, if not a legal, claim upon him that he should yield up his legacy to the estate, and this claim was pressed and insisted upon by the administrators. That they had no such legal claim upon him we have already determined. His brother and sisters all being in affluent circumstances, and his own family in needy circumstances, that he should have voluntarily given up the whole of this large sum, with no mistake in regard to what his legal rights were, it is difficult to believe. It amounted simply to a gift to the administrators for the benefit of the other legatees, whose only claim rested on the bounty of the testator. Courts of equity view such transactions with distrust, and, if the circumstances indicate that the trustee has dealt with the beneficiary unjustly, will not hesitate to set them aside."

To this design of his brethren to diminish or wipe out Williams's share under the will, the testator himself was not a party. He had no knowledge of it or of the steps by which its accomplishment was sought. He was very old and almost blind. But though he had full possession of his faculties, he gave no sign of desire to change the provisions or policy of his will. The Court of Appeals

held that a debt from the legatee to the testator may be created "as an obligation independent of the absolution accorded by the will," but said (p. 546):

> "But we think, also, that, having regard to the manifest purpose of the testator, when this will was made, to hold a free hand to help his children during his life as their necessities might require, and then at the end to divide what remained of his property equally among them, the court ought to require clear proof of some distinct purpose, on the part of the testator, during the transactions when he furnished the helping means which are supposed to have created the debt, to put that debt outside of the pale of the forgiveness which he had written in his will. And it must have been his purpose, and not that of some other. Even an expectation on the part of the legatee that the moneys paid for his benefit would, in the end, come out of his share of the estate, would not change the situation, unless the testator himself had a corresponding intent. He was the master of his fortune, and if he did not lend his money with the intent that if not repaid in his lifetime it should be repaid to his executors, then it would fall under the provisions of this will. There is not to be found in this record any such clear proof of the purpose of the testator to establish by the furnishing of the financial help, which he did, to his son, an independent obligation on the son's part which, if not paid during his life, should not be condoned by the provision in his will."

III.

The receipt of October 16, 1890, which the bill sought to set aside, does not come within the principle relating to compromises of doubtful claims, which counsel seek to invoke. It was obtained from William Means by the executors shortly after their appointment as the culimination of the scheme to which they were parties, conceived and set on foot before the death of the testator, to deprive William of the benefit of Item 5, of the will. The principles which apply to it are correctly set forth in the passage

above quoted from the opinion of the Court of Appeal. The transaction was not one between persons acting under ordinary circumstances and relations. It was an attempt by executors to secure in binding form an assent by a legatee to the charge against his share of sums which were not so chargeable, to get from him a receipt for sums which he had not received from the executors. The paper was both attacked and defended in the pleadings, not as a settlemment, but as a false receipt taken by trustees from the *cestui que trust*.

Not only was the opinion of the Circuit Court of Appeals unanimous, but counsel obtained a careful reconsideration of the case by petition for rehearing, argued fully on brief, upon which an opinion was announced which has not yet been published. We append the opinion on rehearing as an appendix to this brief.

Respectfully Submitted,

JUDSON HARMON,
of Counsel for Appellees.

J. J. GLIDDEN,
H. P. WHITTAKER,
JOHN LITTLE,
of Counsel.

APPENDIX.

No. 367.

United States Circuit Court of Appeals.

SIXTH CIRCUIT.

BENJAMIN R. COWEN, EVAN F. WILLIAMS AND A. S. FRAZER, TRUSTEES, *Appellants*,

vs.

THOMAS M. ADAMS AND E. C. MEANS, ADMINISTRATORS WITH THE WILL ANNEXED OF THE ESTATE OF THOMAS W. MEANS, DECEASED, AND JOHN MEANS, *Appellees*.

Petition for rehearing.

Before LURTON, Circuit Judge, and HAMMOND and SEVERENS, District Judges.

SEVERENS, District Judge, delivered the opinion of the court.

The defendants, Thomas M. Adams and E. C. Means, as administrators with the will annexed, have filed a petition for a rehearing of this case upon the following grounds:

"First. Because the settlement of October 16, 1890, is decreed to be set aside upon grounds not alleged in the bill, and which were therefore not discussed by counsel for the petitioners at the argument.

"Second. Because upon the question whether the notes of William Means are forgiven by the fifth clause of the will there is a clear distinction, overlooked by the court, between the note of November 22, 1888, for $45,000, and the other notes covered by the settlement.

"Third. The petitioners believe and are so advised by their counsel that a consideration of arguments which, for the reason aforesaid, were not presented at the hearing, will lead this Honorable Court to a decision in their favor."

In the statement of the grounds and arguments appended to the petition and in support thereof, counsel, in addition to the suggestion of reasons relevant to the particular ground first stated, on which a rehearing is asked, go into a discussion of other matters involved in the merits of the case which have already been considered by the court and passed upon in the opinion hitherto filed. We do not deem it necessary to reconsider those matters, including the supposed distinction between the note of November 22, 1888, for $45,000, and the other notes covered by the settlement; and shall therefore attend only to the special matter alleged in the petition, which is substantially this: Whether the conclusion which we reached ought to stand, in view of the allegations contained in the pleadings. The ground of complaint is, that the settlement of October 16, 1890, between the administrators and William Means is alleged in the bill to have been made upon a fraudulent combination with William Means for the purpose of defeating the rights of the plaintiffs, and not that it was a fraud upon him as the court appears to have found it to be, and upon which latter view it is said the conclusion of the court rests; and thereupon it is contended that the decision is inconsistent with the allegations of the bill. We do not think this suggestion of inconsistency rests upon any solid ground. The material facts upon which the complainants' case was founded, and upon the proof of which their right to relief was made out, were these: The making of the will, the death of the testator, the assignment of William Mean's legacy to the complainants, and the giving of the receipt to the administrators by William Means without payment of the legacy, either to him or his assignees. These facts the bill avers. All the rest was defensive, and the burden of allegation and proof that the legacy had been paid or validly released was upon the defendants. This

burden was assumed and the defensive allegations pleaded in the answer of the administrators. It is true, as stated, that the complainants alleged in their bill that the defendants entered into a fraudulent combination with William Means by which they attempted to secure his receipt for his legacy, in fraud of complainants, and that in pursuance of said combination William Means executed the receipt; but the defendants denied these allegations in their answer and averred: "That the said receipt "was not executed or delivered in whole or in part "by reason or in persuance of the pretended fraudulent "agreement or combination in the bill set up, and "that no such combination was ever made, and they "deny each and every allegation in the bill in "respect thereof." And throughout they have strenuously maintained this averment. In the briefs filed and at the argument, counsel maintained that there was no such combination. This they probably felt bound to do in order to resist the effect of the alleged assignment of his legacy by William Means to his family, and the decree of the Greene County Court of Common Pleas. This court did not find that there was any fraudulant combination between the administrators and William Means in making the settlement of October 16, 1890, to defeat the rights of the benificiaries under the complainants' trust, and to that extent practically sustained the defendants contention; but upon other grounds held that the complainants were entitled to recover the amount of the legacy. The grounds upon which the court proceeded were strenuously contested, and in the printed and oral arguments were fully and elaborately discussed. What the defendants now contend for is that the complainants by an allegation in the bill which they deny the truth of, and which allegation is unproved, ought to be precluded from recovery upon other substantive and sufficient allegations of fact which the court has found to be established. We think it clear that this proposition can not be maintained, and that as no other new matter is submitted, the petition should be *denied.*

SUPREME COURT OF THE UNITED STATES.

THOMAS M. ADAMS AND E. C. MEANS, ADMINISTRATORS, WITH THE WILL ANNEXED, OF THE ESTATE OF THOMAS W. MEANS, DECEASED.

Petitioners,

vs.

BENJAMIN R. COWAN, EVAN F. WILLIAMS AND A. S. FRAZER, TRUSTEES,

Respondents.

Petition for writ of Certiorari.

STATEMENT.

Thomas W. Means of Ashland, Ky., died testate June 8, 1890, with no debts, possessed of a personal estate valued at over a half million dollars besides some realty. His estate was devised and bequeathed in substantially equal parts to his four children and grandson, only child of a deceased daughter. The fifth item of the will, executed in 1880, reads as follows:—

"Item 5. I have made advances to my said children which are charged to them respectively on my books, and I may make further advances to them respectively, or to some of them, and to my said grandson, which may be charged on my books to their respective accounts, I desire the equal provision herein made for said children, and the provision for

said grandson, to be a provision for them respectively, in addition to said advances made, and that may hereafter be made and that in the division, distribution and settlement of my said estate said advances made, and that may hereafter be made, be treated not as advancements, but as gifts not in any manner to be accounted for by my said children and grandson or any of them, or the issue of any of them."

William Means, one of the four children, resided with his family—wife and three daughters—in Greene County, Ohio.

In February, 1890, by way of composing and settling family differences both of a personal and property nature, he agreed with the wife and daughters in full satisfaction of all their claims against him, which were then accordingly renounced by them, and as a reasonable and proper family arrangement and a settlment in equity upon them, to convey by deed of trust to a trustee his interest in expectancy in his father's estate, with a covenant that upon the father's death he would execute all necessary transfers and conveyances completely to execute and carry out the agreement and settlement, upon the trust that the property should be held for the education of his children and the support of his family, &c. &c. (See Hinkle vs. Wanzer, 17 How. U. S. 368.) The father having died and William having failed to carry out said contract and complete said settlement as agreed, a suit was instituted against him by the wife and daughters in the Common Pleas Court of that county, to compel specific performance of the contract on his part. A decree was rendered in their favor August, 1891, granting the prayer of their petitionand appointing the respondents trustees to secure his share in said estate, and vesting them with the necessary power for the purpose.

The respondents, all residents of Ohio, brought suit in the Circuit Court of the United States for the District of Kentucky, Nov. 16, 1891, against the petitioners, all residents

of Kentucky, to recover William Means' said share in said estate, and to set aside a receipt for $136,035.75, theretofore, to-wit: Oct. 16, 1890, given by him to defendants in alleged payment on account of such share.

At that time, for reasons not necessary to be gone into, William Means was not in accord with his family, and acted under advice of independent counsel. On Dec. 26, 1891, he executed and delivered to said trustees a conveyance of his share in his father's estate, in pursuance of the decree of said Common Pleas Court, which fact was set up in the case by supplemental bill, Jan. 18, 1892. The case was tried in the Circuit Court and a judgment rendered for the defendants, petitioners here, in May, 1895.

The complainants, respondents here, thereupon appealed to the United States Circuit Court of Appeals for the Sixth Circuit which, in February, 1897, unanimously reversed the judgment of the Circuit Court, and directed a decree for complainants setting aside said receipt, requiring an accounting for the purpose of ascertaining the amount due in respect of the legacy of William Means, and a recovery thereof by complainants. An application with full argument covering twenty-two printed pages for a rehearing, based largely upon an alleged mistake or oversight by the court in respect to an item of a $45,000 note which went to make up the amount of the receipt, was filed by defendants. Two months thereafter the same was denied by the court without dissent.

We are not advised of the specific grounds on which the petitioners are about to ask for a writ of *certiorari* to bring the case under review by this court. But judging from the application for a rehearing that they may have some relation to the $45,000 note, which it was complained had been overlooked by the court as to its true relations to the

will, I beg to refer to that matter just as though, if the complaint were well founded, the subject could properly be considered on this application for a writ. In this connection it becomes pertinent to make a further statement deduced from the record:

By the failure of the Metropolitan National Bank of Cincinnati in the early part of the year 1888, and by the efforts of William Means, who was its President (he having unwarily become connected with it after the foundation of its troubles had been laid) to avert the calamity, he became heavily involved. His father came to his rescue, and during the fore part of the year '88 paid, without William's solicitations and largely without his knowledge, his pressing debts and charged the advances so made to him on his (the father's) books. The total thus paid was large. It was much reduced, however, by the collaterals which were taken by the father at their value and credited on the account. The father was aged and infirm, and the business was done by his direction through his older son, John Means, who for some years had acted as his agent and attorney in fact, in ordinary affairs. Subsequent to the payments so made and charged, the agent deemed it best, as he wrote William, in view of the possible demands of creditors in case of the father's death, and by way of "better assurance" that notes be given for the sums so paid or assumed and charged, and still later, (Nov. 1888) that at least a part of the notes should be made a specific charge upon William's expectancy to avoid the operation of the fifth item of the will (See R. 215 *et seq.*, 727-8)—though this purpose was not communicated to William.

The taking of these notes was without the father's knowledge. He never knew of them. They all had for their bases, as stated, these charges on the testator's books.

It was for the balance alleged to be due on them that the receipt in question was given.

The amount of the $45,000 note was included in the cancelled receipt. It was contended in the application for rehearing that the Court failed to distinguish this note from the others, that it stands upon a different footing from the rest and was clearly a charge upon the expectancy, &c. They call attention to the fact that counsel for the Trustees recognized a distinction; but they do not allude to the significant fact that they themselves in their elaborate arguments, never once hinted at the distinction prior to their application for a re-hearing. The case was elaborately argued before both Courts orally and by briefs.

Every question that could arise under the pleadings or under the evidence with the pleadings conformed thereto, and some beyond the range of the case, were discussed, save only that defendants did not present the *now* alleged peculiarity of this $45,000 note.

After the oral argument in the Court of Appeals leave was granted the trustees to print a brief used in the hearing with the right to defendants to print a reply.

In this brief a distinction was noted in one respect (not affecting the merits of the controversy) between this note and the others going to make up the amount of the receipt, in the following passage:

"We repeat with confidence that the notes made subsequent to the advances do not in any manner change the character of the charges on the books; that these charges stand just as they would had no notes been given, and thus standing they fall admittedly under the 5th item. Indeed, the advances would fall under it just the same if no charge had been made, but notes taken instead. For the testator does not say he will charge any advances he may make in the future on his books. He says they "*may* be charged on my books" and of course may not be. But this question is not

involved, for all the advances of 1888 were, in fact, so charged. They are no less advances because notes were taken.

That such was the effect appears to have been the view of John Means and his attorneys, Messrs. Hagar & Moore, in the fall of 1888. (R. 215, 727.) Then in order to avoid that effect, it was determined to have William Means give the four notes with the contract clause added to make them a charge against his expectancy. This transaction was most remarkable. It was nothing less than an attempt by third persons to change the course of the property of Thomas W. Means from that mapped out by him in his will. It was in effect a movement to add a codicil to the will without the participation of the testator. In this connection it is to be noted:

1. Admittedly Thomas W. Means had no knowledge of this business, either then, before or afterwards.

2. There was no cosideration for the memorandum contract to charge the expectancy, as to *three* of the notes.

Whatever went to make up their consideration had been long before paid and charged against William. They were completed transactions. The $45,000 note stood upon a different ground. It was for a consideration yet to be performed. If Thomas W. Means had known of this transaction and been a party to it, there would be no disposition to question its standing in equity, under the doctrine of Quarles *vs.* Quarles, 4 Mass. 680, and Kenney *vs.* Tucker, 8 Mass. 143; but with this qualification: We would then submit to the Court whether the agreement between William and his father to charge the expectancy was effected by the 5th item—whether that would not strike down the debt and leave no foundation for the agreement to charge, etc., to rest on."

Although their attention was thus called to *a* distinction between this note and the rest, they made no allusion to it in their reply, covering a number of printed pages. There was never the remotest suggestion by them that the other notes might fall under the operation of the 5th item of the will, and this one remain a charge upon the expectancy, nor any other claim that it should be distinguished from them. For the first time this claim was put forward on the application for a re-hearing. They were then too late, if the claim ever had

merit. As stated the case had been elaborately argued before both Courts. Each took about eight months to consider it, and announced their conclusions in elaborate opinions; and when this claim was put forward for the first time on the application for a re-hearing the Court took two months more to consider it. It is submitted that, under the circumstances, if the case were now under review, this belated contention of defendants below would be entitled to little weight.

The other objections urged in the application for a re-hearing were of a technical or unsubstantial nature. At least they did not go to the real matters in controversy.

There were some things said in the application by way of unwarranted deductions from the evidence. For instance, when it is remembered that William Means had on deposit with the Metropolitan Bank at the time of its failure collaterals, reasonably relied on as many thousand dollars in value in excess of his loan from the bank and the Labrot fund, collaterals for *that* fund as well as collaterals for the bank, and which were disposed of without his knowledge when he was sick and unable to give attention to his affairs, it is unjust to speak of his "defalcation to the Labrot estate." There was no such thing in fact as a defalcation. But—enough of this.

The truth is the substantial contention of defendants from the beginning and all though the controversy was that "William Means was without interest in the estate of his father, so far as the same should be necessary to pay his indebtedness evidenced by his notes"—*all* of them; that the notes "evidenced debts and not advancements" or "advances" and did not come under the operation of item five of the will properly construed, their construction being that of the Circuit Court. Their construction of the will on which they planted themselves and relied for a recovery was not adopted

by the Circuit Court of Appeals. That Court thought the will meant what it said; defendants thought it meant the contrary of what it said. There is the difference; and there is the chief cause of defendants' disappointment.

APPLICATION OF THE LAW.

The foregoing statement is sufficient to show:

(1) There is no question of public concern involved in this litigation. Private rights alone are affected, and these are confined to less than a dozen people—to be exact, to just nine. No one else can have the slightest concern in the litigation.

(2) The questions raised and decided are not "grave and important." In fact they are neither the one nor the other, except as that may be true of any suit. To the individual parties in nearly every case the result may be said, in a limited sense, to be important and in many a one to be grave also. How can this case be said to be grave and important in any sense not equally applicable to almost any other? The amount involved certainly is not to be considered. That is always relative in such a sense. A hundred dollars may be more important to one than a hundred thousand to another. If Congress had intended a discrimination in favor of large claims it would have fixed the limit. For the Court to do so would be to indulge in judicial legislation. If to lose or gain a law suit is a "grave" matter the element of gravity is present, but not otherwise. But the sense in which the terms are employed by this Court, in elucidating the *certiorari* clause of the Evarts act, is broad and comprehensive. It involves the consideration of the *general weal.*

(3) There is no question of uniformity of decision arising in the case. The writ cannot consequently issue.

Lau Ow Bew v. United States, 141 U. S., 563, and 144 U. S., 47.

In re Woods, 143 U. S., 202.

Am. Const. Co. v. Railway, 148 U. S., 372.

In the last case the Court, page 383, say of the provision pertaining to review by the Supreme Court under writs of *certiorari*, that the jurisdiction "should be exercised sparingly and with *great caution, and only in cases of peculiar gravity and general importance*, or in order to secure uniformity of decision."

"Accordingly, while there have been many applications to this court for writs of *certiorari* to the Circuit Court of Appeals under this provision, two only have been granted: the one in Lau Ow Bew's case, above cited, which involved a grave question of public international law, affecting the relations between the United States and a foreign country; the other in Fabre, Petitioner, No. 1237 of the present term, an admiralty case, which presented an important question as to the rules of navigation, and in which the decree of the Circuit Court of Appeals for the Second Circuit reversed a decree of the District Judge, and was dissented from by one of the three Circuit Judges; and in each of those cases the Circuit Court of Appeals had declined to certify the question to this Court."

There was no dissent in our case. There was no refusal to certify any question to this Court, for no such certificate was requested.

How, then, counsel for petitioners can claim this case even borders upon, much less falls within, the very limited classes of cases which, under established law, can be brought before the Supreme Court for review by *certiorari* to Circuit Courts of Appeals, is, of course, for them to show—if they can.

To ask the admission of this case for review, as it seems to me, is to ask the Court to disregard its holdings on the subject—to throw down the bars, and to ignore the judicially declared manifest purpose of the Judiciary Act of 1891,

namely: to relieve the Supreme Court "of the oppressive burden of general litigation, which impeded the examination and disposition of cases of *public concern*, and delayed suitors in the pursuit of justice;" and to distribute between the Supreme Court and the Circuit Court of Appeals "substantially the entire appeleate jurisdiction over the Circuit Courts of the United States."

In re, Woods *supra.*,

Carey v. Railroad, 150 U. S., 179.

United States v. Rider, 163 U. S., 139.

In a recent case, *In re* Chetwood, 165 U. S., 443, this Court allowed a writ of *certiorari* to the U. S. Circuit Court for the Northern District of California, under the provisions of the Judiciary Act of 1789, in a contempt proceeding where the construction of certain provisions of the National Bank Act, and the personal liberty of one wrongfully adjudged in contempt, were involved. There the Court say:

"Judgments in proceedings in contempt are not reviewable here on appeal or error; * * * but they may be reached by *certiorari* in the absence of any other adequate remedy."

But our case cannot be placed in the category of that one, among other reasons because the judgment of the Circuit Court of Appeals is *final* unless brought into this Court through the narrow door of the Act of March 3, 1891, and, of course, within the rules defined by this Court.

This case concerns the distribution of a considerable amount of funds in the hands of Administrators, now long delayed, and it is earnestly hoped the Court may dispose of the petition before the present term be finally adjourned.

Respectfully submitted,

JOHN LITTLE,

of Counsel for Respondents.

No. 113.

Br. of Harmon & Little for Resps

Office Supreme Court U. S.
FILED
DEC 18 1898
JAMES H. MCKENNEY
Clerk

Filed Dec. 13, 1898.

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 113.

THOMAS M. ADAMS AND E. C. MEANS,
ADMINISTRATORS, ETC., OF THOMAS W. MEANS,
Petitioners,

v.

BENJAMIN R. COWEN ET AL., TRUSTEES,
Respondents.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENTS.

JUDSON HARMON,
JOHN J. GLIDDEN,
H. P. WHITAKER.

JOHN LITTLE,
Of Counsel.

THE OHIO VALLEY PRESS, CINCINNATI.

Supreme Court of the United States.

THOMAS M. ADAMS ET AL., ADMR'S &C. OF THOMAS W. MEANS,
v.
BENJAMIN R. COWEN ET AL., TRUSTEES.

No. 113.

BRIEF FOR COWEN ET AL., TRUSTEES.

NATURE OF THE CASE.

Respondents hold William Means' share under his father's will in trust for his family, which, besides himself, consists of a wife and three daughters, all unmarried and one a minor.

The question is not, as counsel say, whether William's share shall be "a double portion," but whether it shall be any portion at all.

Under the decision of the Circuit Court, from which counsel freely quote, William Means and his family would have been left penniless, in spite of his father's will. Under that of the Circuit Court of Appeals, if it be not disturbed by this court, they will receive exactly the portion expressly given by Item 4 to each of the five legatees, including William.

If the former consequence result from the due enforcement of the testamentary scheme disclosed by the will, the pitifulness of it can make no difference. But if that consequence prove to be hostile to the lifelong policy of the father toward his children, the court will not be astute to defeat a provision of his will intended to prevent such consequence. Certainly not if such naturally expected provision be plain. And even if ingenious counsel be able to conjure up difficulties, the court will surely, if it be fairly possible, resolve all doubts in favor of a construction which makes the father in death as he was in life, fonder of the welfare of his children than of a mere rule of mathematics.

The Administrators have virtually wiped out William's share under Item 4 by charging against it various advances made for him by his father after the date of the will. We claim that this was done in disregard of the plain direction of Item 5, which was as follows:

"Item 5. I have made advances to my said children which are charged to them respectively on my books, and I may make further advances to them respectively, or to some of them, and to my said grandson, which may be charged on my books to their respective accounts. I desire the equal provision herein made for said children, and the provision for said grandson, to be a provision for them respectively, in addition to said advances made, and that may hereafter be made, and that in the division, distribution and settlement of my said estate said advances made, and that may hereafter be made, be treated not as advancements but as gifts not in any manner to be accounted for by my said children and grandson, or any of them, or the issue of any of them."

It is admitted that the advances to the different children were unequal when the will was made. As will appear later they were grossly so, no two being any where near

equal. The purpose was expressed of making further advances to all or, to *some only*, if he should think best. Yet counsel persist in declaring (Brief, 4) that the testator's "dominating purpose was equality," and in referring to rules and authorities which have no bearing when the design of equality is disclaimed.

The fixed purpose to make equal division *under the will*, without regard to advances made during the testator's lifetime, being once ascertained, the extent of inequality which may be figured out in total benefits received from the father living and dead matters not. If the policy of the testator lead in this way to what counsel style sometimes a "double portion," and sometimes a "triple portion," whose concern is it? The trouble with counsel, as with clients, is a stubborn purpose to change the will of Thomas W. Means rather than to fulfill it.

MEANING OF ADVANCES IN ITEM 5.

The use of both the words "advances" and "advancements" shows intelligent discrimination. Each word has a fixed and definite meaning.

> "Advancement" and "advancements" are the terms used in the law dictionaries, and in our statutes, to designate money or property given by a father to his children, as a portion of his estate, and to be taken into account in the final partition or distribution thereof. "Advances" is not the appropriate term for money or property thus furnished. The latter phrase, in legal parlance, has a different and far broader signification. It may characterize a loan or a gift, or money advanced to be repaid conditionally. "Lent and advanced" was the language of the old common count in assumpsit for money loaned or advanced to be repaid. *Chase* v. *Ewing*, 51 Barb. 597, 612.

> See also *Nolan* v. *Bolton*, 25 Ga. 352, 355; *Powder Co.* v. *Burkhardt*, 97 U. S. 110, 117.
>
> But advancement, in its legal acceptation, does not involve the idea of obligation or *future liability to answer*. It is a *pure and irrevocable gift* made by a parent to a child in anticipation of such child's future share of the parent's estate. (Italics ours.) *Yundt's Appeal*, 13 Pa. St. 575, 580.

It is too well settled to require citations that the character of a transaction by which a child receives money or property from a parent is determined by the intention existing at the time. As the Circuit Court of Appeals said (Rec., 614):

> In the nature of things it was not possible for him to have intended by "advances" the same thing as "advancements," for that involves an intention, at the time of supplying the money, that it shall be such.

The comprehensive term "advances" was employed because the restrictive one, "advancements," would not include all the charges against his children and grandchildren, whether debts or gifts, while "*advances*" would.

In *Barker* v. *Comins*, 110 Mass. 477, 488, decided by Judge (now Mr. Justice) Gray, it was held to have been rightly ruled below that the word "advances" used in the will was not restricted to "advancements." The ruling approved (p. 483) referred to benefits conferred by *loans for which notes were given*, which the twelfth clause of the will directed should be considered as so much paid toward the share of the maker. These notes, therefore, were not only "advances," but, until the will took effect, were obligations evidenced by notes.

The foundation of the opposing argument is that by "advances" the testator meant "advancements." This is asserted time and again in the plainest terms. Many items

claimed to be "advancements" are selected from the long accounts with the different children, as they stood at the date of the will.

It may be admitted that the subject matter of some of the items selected, and of others, would have been appropriate for advancements, and that, therefore, slight evidences of intention to make irrevocable gifts by way of advancement might suffice in the absence of opposing circumstances.

The testimony of John, who was his father's agent during the entire period in controversy, and who made most of the entries, is that these accounts cover every transaction of every kind between the father and his children. (Rec., 68, Q. 269; and 70, Q. 294-5.) He was an adverse witness and his testimony is not disputed. He says (Rec., 72) there were hundreds of transactions in the accounts "backwards and forwards," and he "can not recollect how they were all *settled*."

It would be incredible that all the items in those accounts are like those selected. Many of them clearly are not. Yet we might admit that all were, without affecting our case, because it appears in many ways that the necessary element of an advancement was lacking in every instance of a *charge* in the accounts, viz.: the intention to make an "irrevocable gift" free not only from present "obligation," but also from "*future liability to answer*." On the contrary, it will appear that when the children received money or property it was charged to them as debtors, in the ordinary way, in the regular books which contained the records of all the father's many business transactions; that the accounts with them contained numerous *credits* as well as charges; that balances were regularly made and carried forward as in all the other accounts; that they

were, and were treated as, in all respects ordinary current accounts of debit and credit; and that the father as well as the children always considered and acted on them as under the father's control and not beyond it, as it would have been the case if they had been mere records of advancements.

The character of the book in which charges are made, as well as their form, has always been held to be significant of the intention.

In *Bulkeley* v. *Noble*, 2 Pick. 337, 340, the charges were in a little memorandum book and headed "Articles that I let my daughter, Nancy Porter, have." It was held that the intention was to make an advancement.

In *Henry Ashley, Appellant*, etc., 4 Pick. 21, the form of the account is given. It was in the regular book of accounts and marked "Dr." The Chief Justice said:

> In the case before us the charge is of no other kind than would appear if it were intended to debit the same with the several items of the account. Nor is there anything to distinguish it from the other book debts of the deceased. It has been very strongly urged upon us that there is no difference between this case and that of *Bulkeley* v. *Noble*, but we think the difference very apparent. The form of the book and the form of the charge were wholly dissimilar. In a little memorandum book, in which the intestate had entered other memorandums of articles furnished to other children, most clearly as advancements, was an account of articles delivered to his daughter, Nancy Porter, under the head "Articles that I let my daughter, Nancy Porter, have."

The charge was held to be a debt, not an advancement.

While the Massachusetts statute, with which the court deals in the opinion, required that a charge against a child should be made as and for an advancement, this does not

affect the weight of the decision as showing the force and effect of ordinary debtor charges against children in the father's regular books of account.

Weatherhead v. *Field*, 26 Vt. 665, 668, quotes from *Bulkeley* v. *Noble* as follows:

> That no particular form of words is required to show an advancement; an entry on the books of the intestate of property delivered to a child, *made in such a manner as to preclude the idea of a debt*, is evidence that it was intended for an advancement. (Italics ours.)

The court said further:

> The fact that the several heirs are charged with these different sums as "Dr." is a circumstance to show that a debt was intended; *and if the charges had been entered on his book among charges to other persons, where a debt was evidently intended*, it would be difficult to resist the inference that such intention existed in relation to these charges. (Italics ours).

The court held, following *Adams* v. *Adams*, 22 Vt. 64, that the statute of that state, which is substantially the same as in Massachusetts, was "not intended to introduce any new law upon the subject."

There is nothing in the accounts in question to distinguish them from all other business accounts of the testator. The debits and credits were all in due form. The intention clearly was to make and keep obligations against his children, to be dealt with in the future as he should determine, they remaining at all times under his absolute control, a control which he repeatedly exercised.

In *Miller's Appeal*, 40 Pa. St. 51, 60, the court held, by Judge (afterward Mr. Justice) Strong, that

> Questions of advancement are always questions of intention, *and of intention when the property is received*

by the child. If it was a gift then it can not be converted into a debt by any subsequent act or intention of the father. If it was the creation of a debt, then it will continue a debt, notwithstanding any change of the parent's intention, unless some further act be done or agreement entered into to convert it into an advancement. The difficulties in solving such questions are generally found in the evidence from which the intention of the parent is to be gathered. A parent may be liberal to a child, more so than to his other children, without imposing any obligation for future accountability, either to himself or to his estate. It is indeed a common sentiment that equality is equity, but a father is under no legal obligations to make his children equal, *and discrimination in a family is often equitable.* * * * So, too, it is cogent evidence that an advancement is not intended by a father (and in most cases it is conclusive evidence), that he takes from the child a security for the money furnished, or attempts to preserve evidence of it as a debt. *High's Appeal*, 9 Harris 287. If the gift is designed to be irrevocable, there can be no reason for attempting *to retain the power of recalling*, and the attempt shows that *it is not the purpose of the father to give up all possible control over it.* * * * * But before the money can be treated as an advancement there must be affirmative evidence that it was intended to be neither a gift nor the creation of a debt, but a part portion. In some cases this intention is inferred as matter of law from the character of the act. Thus if a parent conveys land to the child from consideration of love and affection only, or pays the purchase money of land conveyed by another to the child, the law presumes it an advancement, though not conclusively. *But where personal chattels or money are delivered to the child, or paid for him, there must be evidence of an intention to make an advancement beyond the unexplained act of delivery or payment. Johnson* v. *Belden*, 20 Conn. 322. Here the father made a charge of the

> sums of money furnished not in a "family book," in which advanced portions are usually entered, *but in his general day book, in which he kept his accounts of debtor and creditor.* The charge was made precisely as it must have been made had he intended to preserve evidence of his son's indebtedness. *The appellant was charged as a debtor, and he was credited for partial repayments.* All this is inconsistent with any intention then existing to make an irrevocable gift. It matters not that sums of money are not properly chargeable in a book of original entries. That would be important in an action between the father and the son; but it is of no consequence when we are seeking only for the intention of the father. We know that money is often thus charged, and though it can not be recovered on such evidence, it is not to be doubted that it is generally intended as a memorandum of a debt, and a means of enforcing payment. In *Ashley's Appeal*, 4 Pick. 21, it was ruled that sums of money, charged by a parent against his child in the usual way of keeping accounts, are not to be treated as advancements under the Massachusetts Statutes. (Italics ours).

"To retain the power of recalling" these accounts and "control over" them, as this distinguished judge puts it, is entirely consistent with the absence of a present purpose on the father's part to exercise the power, unless occasion arise, and with the presence of an expectation that, unless his own wishes or ideas of what is best for his children, or some of them, should lead him to do otherwise, the amounts charged will be left to adjustment by will or otherwise after his death. Until the power and control are in some way surrendered such accounts constitute *debts,* and nothing else.

That the nature of the charges in these accounts to

which the testator referred as "advances" were such as we have stated will appear from the following:

STATEMENT OF FACTS TO DATE OF WILL.

Thomas W. Means was one of the pioneer iron manufacturers in the Hanging Rock region of Ohio. He had strong natural powers of mind, much shrewdness, staunch integrity, and strong love of family. A dominant trait of his character was constant affection for, and great generosity to, each and all of his children, especially in their misfortunes.

"He was a man of strong character and fixed adherence to his plans in life. He was also a man of strong paternal affections, and had been accustomed to extend his assistance and support to all his children by employing his large means on every occasion of their need." (Rec., 616.) No attempt is made to gainsay this striking portraiture of the testator by the Circuit Court of Appeals.

He was prosperous in business. After long retirement in his old age, and notwithstanding the large amounts his children received from him in his lifetime, he left a large estate.

In 1855, when his two oldest sons, John and William, became grown, he had already achieved success, and then inaugurated the policy of using his means to aid his children, which he pursued to the end of his life. That policy was to make advances to them of money or property, as their needs or interests should require, in such a way that he would assist them in making careers for themselves and at the same time protect himself and enable him to do justice to his younger children, if circumstances should at any time so require.

He opened accounts with these two sons, and afterward with his daughters and younger son. These accounts were in his regular ledger, which contained a record of all his many business transactions, posted therein from the journals. In these accounts he invariably charged all money and all stock or property at full value, which he, at any time, advanced to any of his children, thereby reserving the right to require repayment of the money and of the value of the stock or property, if, in his judgment, future events should require this to be done.

John's account begins January 22, 1855; William's February 6, 1855; Mrs. Adams', November 16, 1862; Mrs. Culbertson's, September 18, 1866, and Margaret's, October 24, 1872. (Rec., 323, *et seq.*) The word "advances," which now appears in red ink at the head of some of the accounts and in the index of the ledger, was written by John Means, of his own volition, long after the will was made, some time in 1888, and there is no evidence that the father ever knew of its being there. (Rec., 69 and 70.) The original books, by stipulation (Rec., 1), will be laid before the court.

The first considerable advance was to the eldest son, John, in 1855, of money to enable him to subscribe and pay for $25,000 of stock of the Kentucky I. C. & M. Co. This was John's first business venture. It proved to be a losing one, and in 1862 was known to be such. The father then, following his generous impulses to his children, had John transfer the stock to him, repaid John all he had invested, and assumed the loss. The amounts advanced were charged to John in various items, and *he was credited with the amount when his father repurchased the stock.* See entries March 22, 1860, and June 30, 1862. (Rec., 63 and 324.)

In 1855 the father became a partner in Dugan, Means, Hall & Co., bankers, and in 1860 John purchased an interest in that firm. This venture proved disastrous, and in 1862, when he knew that the stock was worth less than nothing, and its possession a menace, of liability for the entire debts of the company, the father took John's interest off his hands, paying him all he had paid for it, including a premium of $1,000. John retained a dividend of $750 which he had received on the stock when he bought it. (Rec., 88.) The amount of the purchase price was simply *credited* in his account. (Ledger, p. 19).

The balances against John were at all times large before the accounts were opened with any of the other children, except William, having been $61,622.95 in January, 1858; $62,570.06 in August, 1859; and $64,554.06 in January, 1860.

The first balance against William was $3,531.12 in May, 1858. The balance was $3,823.87 in August, 1859, and $2,275.51 in January, 1860.

Large advances were made to both John and William to enable them to purchase stock in Means, Kyle & Co., the charges beginning July 29, 1864. On October 9, 1869, William's stock was bought by his father, *and his account credited with the purchase price*, $99,400, which made the balance $15,841.69 *in William's favor* on that date. (Rec., 331, Ledger, 220.)

At that time the balance against John was $118,993.70; the balance against Mrs. Culbertson $34,081.00; the balance against Mrs. Adams $38,371.04; and the account with Margaret had not yet been opened.

One of the instances where the father came forward to help his children in time of trouble was in the case of Mrs. Adams. She contracted an unfortunate marriage, and a

long and expensive controversy resulted, terminating in a divorce. (See entry in father's handwriting, Journal 1, p. 302.) The very first charges in her account are all of advances made for expenses in this matter, and the books show numerous further ones, all charged against her, extending over a considerable period and amounting to many thousands of dollars. (See Ledger, pp. 16, 287, and Journal 1, *passim.*)

Without now going further into details, with which the books and testimony abound, it can be truly said that the history of the business life of Thomas W. Means, from 1855 to the date of the will, July 20, 1880, shows constant advances to his various children to aid or relieve them, but always made in the manner above described, thereby reserving the right to require their return at any time.

The character and intent of these accounts, therefore, plainly appear upon their face. Why were amounts he owed his children habitually credited in these accounts if the charges recorded "irrevocable gifts" by way of advancement?

Absurdity is involved in the very idea of varying balances of a running account being advancements or any sort of gifts. Realizing this, counsel, in their brief below, argued that the items of advancements must be selected from the other items, "allowing the *res gestae* of each item charged to determine its character." It is not possible, however, in this way to make up the amounts set up in the answer, or to come anywhere near equalizing the totals of the advances.

But if confirmation be needed of the evidence of the accounts themselves, it is afforded in abundance by other circumstances.

1. At the head of John's account (Ledger, 19, Rec.,

323) appears, in the father's handwriting, this memorandum:

"This act. and the acts. of William Means and Mary Ann Adams are not to be charged with interest when final settlement is made, or at any time. Thomas W. Means."

There is no date; but as the account of Mrs. Adams was not opened until November 16, 1862, it was plainly some time after that date. There is no such memorandum on William's account (Ledger, 40), but above his account, after it was carried to Ledger, p. 220, the first date thereon being September 17, 1860, the following appears:

"No interest shall be charged on this account on final settlement, or at any other time. Thomas W. Means."

The same is written and signed above Mrs. Culbertson's account (Ledger, 280), at the top of Margaret's account (Ledger, p. 230), the first item of which is October 24, 1872, and is repeated at the top of John's account when transferred to page 281, where the first entry is December 31, 1866.

The testimony of one of the bookkeepers shows that some of these directions were written before and others after July, 1869. (Rec., 546, 548).

The dates when these releases of interest were written, being shortly after the close of the Civil War, when the father's profits from his iron and other interests had been enormous, show that he thought the time had come when he might prudently release his claims against his several children *for interest* on the advances he had made to them. Until then he had certainly intended that they should bear interest. After then he as certainly regarded the principal as under his control.

2. On December 9, 1873, the father determined to make a distribution of a part of his estate among his

children. He accordingly made an entry (Journal 2, p. 4, Rec., 71) charging his own account with $400,000, and *crediting* that of each of his five children with $80,000, adding, "Amount to reduce the balances against these accounts, having been given to my children. (Signed) Thomas W. Means." Accordingly on the same day the account of each was *credited* with $80,000. This credit reduced the balance of the account against John, on that date, to $69,417.96; the balance against William to $21,207.54; the balance against Mrs. Adams to $1,007.78; made the balance *in favor* of Mrs. Culbertson $5,000, and the balance *in favor* of Margaret $6,580. Counsel say (Brief, p. 39) after quoting the above memorandum, "This seems to be a clear statement of the testator that the accounts represented gifts!" This meaning is extracted by referring the clause "having been given to my children" to "accounts" instead of to "amount." The manifest absurdity of this is emphasized by the fact that in two cases the gift exceeded the debit balances of the account.

If the amounts charged in these various accounts were in the nature of advancements, the $80,000 given to each child would necessarily have been *charged* also. The fact that it was *credited* shows conclusively that it was a gift and was made to offset and cancel the *charges* in the account, *pro tanto* as to some of the children, and entirely, leaving a balance in their favor, as to others. He thereby exercised his power to recall the advances charged. They were repaid to him by this gift. He paid nothing, but simply credited. What he gave was merely what they owed him on these accounts. What he distributed was these *assets* entered and carried as such on his books.

3. On March 22, 1871, the father opened an account

with Thomas W. Means, Jr., a son who died unmarried before the will was made, charging him on that date with $50,000, advanced to enable him to buy Means, Kyle & Co. stock. At the top of the debit side of this account there is written in the father's handwriting, "This is not to be paid." This direction counsel say "it is fair to assume was intended by him as the equivalent of the superscription over the other accounts," viz.: that no interest was to be charged on them! The reasons are obvious why he may well have chosen to treat his youngest son differently. When he came of age, the use alone of the advances made to the other children long before amounted to more than the entire sum advanced Thomas. John admitted that this was a source of great inequality. Computation shows that it would make a difference in John's favor alone, as against William, of more than $141,000 (Rec., 173). The difference with Thomas would of course be still greater. But reason or not, the difference between the direction written above Thomas' account and those written above the others is not to be escaped.

4. Pursuing his fixed policy of aiding his children, the father entered into business with his son-in-law, Culbertson, in the Princess and Buena Vista Furnaces. The venture proved disastrous and was closed up between 1875 and 1880 with a loss of $168,989.38 (Ledger, 333). The father did not charge any part of this to his daughter, though he had gone into the business to aid her husband, who managed it, and within ten days before the execution of the will, wrote out and gave to Culbertson the following release:

"Whereas, in the settlement of the partnership heretofore existing between Thomas W. Means, W. W. Culbertson and K. R. Culbertson, deceased, by a suit in the Boyd

Criminal Court, there appears to be a balance in favor of Thomas W. Means against the said partnership. Now in consideration of one dollar to me in hand, paid by W. W. Culbertson, I, Thomas W. Means, do hereby release and acquit W. W. Culbertson of all liabilities to me for said balance, and this shall be his receipt in full therefor. Witness my hand this 10th day of July, 1880. Thomas W. Means."

This paper was given to Culbertson without his solicitation. (Rec., 208.) By the will, which was then in preparation or contemplation (Brief, p. 42), all obligations on the part of the children arising out of advances to them were to be wiped out. But the will would not release the son-in-law from this undoubted debt. Hence this separate forgiveness.

It will be noted that the entire loss was incurred in an effort to establish Culbertson in business.

Why one-fourth the price of the furnace property used in this business was charged to Mrs. Culbertson years after the purchase, does not appear. It is made by John, in his own handwriting. It was not chargeable to her as an *advancement*, which counsel claim it was. (Brief, p. 49.) *Stayner* v. *Bower*, 42, O. S. 314.

This care to release his son-in-law from a debt so shortly before the will as to be virtually a part of it throws strong light on the testator's motives and intention.

5. If it be suggested that the crediting of amounts at which unfortunate ventures of the children were taken off their hands by the father was merely a matter of bookkeeping—a mode of canceling the charges for the original advances—this, if true, would not be inconsistent with our position. It would still show that the advances, when made, lacked the element of irrevocable gift necessary

to advancements, but that on the contrary they remained under the father's control to be dealt with as he might choose.

But these are exceptions. There are many instances where the credits had no relation to any of the charges. We will mention some of them.

John bought the stock in Dugan, Means, Hall & Co.'s bank, heretofore mentioned, with his own money, from a stranger, so that there was no charge to him. (See John Means, Rec., 88, Q. 551 *et seq.*) When the firm became deeply involved so that the stock was not only a loss but a peril, the father bought it from John, paying him what he had paid for it, including a premium of $1,000, and instead of paying him *credited the amount to his account.* Thereby $6,000 of the advances charged were repaid.

Again, take the entries after the death of Thomas W. Means, Jr. Counsel use part of these (Brief, pp. 46-7) but omit the others without even referring to them, though they immediately follow those used.

T. W., Jr., had been charged with amounts advanced by his father to enable him to buy certain stock. It was over the debit side of this account that the direction was written "This is not to be paid." Thomas having died unmarried and intestate his affairs were evidently settled without an administrator.

This stock, though Thomas', was divided among the surviving children. Just why it was charged to them in their accounts does not appear, but as it really came from the father they seem to have made no objection.

But by the succeeding entries (Journal 1, p. 398) a *credit* of $6,310.55 was made to each surviving child and after-

ward carried to the ledger accounts. Below the journal entry is the following:

"The above entry is made to divide the amount I owe to T. W. Means, Jr., deceased, on account of dividends on his Means, Kyle & Co. stock and balance due him in Second National Bank received by me, equally among his heirs."

As the father had owed this to Thomas he of course owed it to his heirs. If their accounts were mere records of advancements why should he pay this debt by credits in them?

Again, take the $23,400, credited to John Dec. 9, 1873 for amounts paid Mrs. Adams and Margaret (Journal 2, p. 4, Ledger, 281, 287, 320.) Counsel use this entry (Brief, p. 39) to show "that John paid each of his sisters $11,700 out of his own money toward equalizing them with him," but they seem not to see its real significance.

As counsel say (id.) "John was $89,423.58 ahead of Mrs. Adams and $100,855.68 ahead of Margaret." On what? On an account of *advancements*, they contend—irrevocable gifts never to be paid and to be accounted for only in the settlement of the estate. The father requires John to pay each of his sisters a large amount, *out of his own money.*" He does so. He is *credited* for it in that very account and the sisters *charged* in theirs. What was this but the collecting back by the father from John of $23,400, of the advances made to him and advancing half of it to each of the two sisters?

John gives an instance where the father repaid a loan from the son by a simple credit on that son's account (Rec., 113.):

Q. 1091. You say on page 34 in your testimony that at the time you were paying for your subscriptions in the Low Moor Iron Company, your father then paid you back certain sums that you had loaned to him. Now, I would like to have you state a little more specifically, Mr. Means, when you loaned your father money, and what evidence there was of any loan of money from you to your father?

A. These books will show it. August 18th, 1870, I let him have $6,000. September 2d, 1870, $6,000.

Q. 1092. Were not those credited to you in the book?

A. I think so.

Q. 1093. In your account?

A. I think so.

Q. 1094. And appear as a credit that reduces the charges against you?

A. Yes, sir.

The foregoing is part of the evidence on which the Court of Appeals said (Rec., p. 617) "There is no doubt that Thomas W. Means was accustomed to enter charges in his book as denoting an indebtedness from his children to himself."

The general nature of these accounts is not affected by such an entry as that mentioned (Brief, 49, 50) whereby John was charged with money received from his father for investment and credited shortly afterward when he expended it. As this was plainly neither a gift nor an advance and the entries are all in John's handwriting (Journal 2, p. 118, Ledger, p. 380), it is for John to explain why he so made them, the date being shortly after the will whose provisions he knew. It is not true that either our argument or the decision of the Court of Appeals would have

resulted in giving John this money if the father had died before the offsetting credits had been entered, if the above facts had clearly appeared.

The record shows that by the aid supplied by the father the children all prospered and became rich. Suppose matters had gone otherwise with the father and he had required the return of these advances or some of them. In view of the way these accounts were kept and of the facts above set forth showing their undoubted character and treatment, by them as well as by him, as current business accounts subject to his absolute control, would the court hesitate to enforce the right he had reserved to recall them at will?

Surely it would not. Obligations, then, they surely were and nothing else, until he in some way released them. And they were none the less obligations because occasions did not arise for their enforcement, except by discharging them in part from time to time by credits.

As the *father's* intention at the time of the advances must determine their character, letters of the children to each other at any time, especially after the date of the will, like that of John to William, quoted by counsel (Brief, p. 43), are wholly incompetent. But even if they were not, the expressions in them are plainly to be accounted for by the fact that by the will, which had been shown to the children, all advances were to be forgiven. There being then little likelihood of any change in the situation of the father which might require him to exercise his control over the advances by recalling them, the children would naturally regard and mention them as already being what they would, in the course of nature, soon become, viz.: gifts or distributions.

At the date of the will the accounts showed the following debtor balances:

John	$79,214.36
William	58,409.54
Mrs. Adams	51,207.48
Margaret	39,120.78
Mrs. Culbertson	29,609.82

The balance due from John was more than three times that due from Mrs. C., more than twice that due from Margaret, over one-half more than that due from Mrs. A., and over one-third more than that due from William.

The figures given in the opposing brief (p. 2) are found by adding to each of these balances, with some errors in calculation, the $80,000, credited in each nearly seven years before. The same is done in the answer. (Rec., 22.)

In view of these differences then existing, why talk of a "dominant idea of equality?" If the testator had died within a few months after he made the will, there would have been no escape from the gross inequalities above set forth. The record plainly shows that his advances had been unequal from the beginning. His conduct was always governed by the respective needs or interests of his children, and by them only. He never stopped to figure their balances before going to their aid.

There is no suggestion of any purpose to abandon that life-long policy. The contrary intention is clearly written in the will. "I have made advances to my children;" "I may make further advances to them respectively, *or to some of them;*" "I desire the equal provision herein made to be a provision for them respectively *in addition* to said advances made and that *may hereafter be made*."

The intention of equality in what the children should receive at the testator's death is plain. The intention of actual or possible inequality in the advances is equally plain.

If, as counsel contend, the "advances" referred to in Item 5 meant only "advancements" made and to be made, the item was wholly useless, because advancements relate only to cases of intestacy, and whatever had been or might afterward be given in that way would not, under a will, be chargeable against the legacies. *Needles* v. *Needles*, 7 O. S. 432, 435.

Counsel refer to Sec. 4169 Ohio Statutes (Brief, 40) without mentioning the fact that it applies in terms only to property "given by any *intestate*," &c.

To give this item any effect at all, therefore, it must be held to refer to money and property advanced so as to create an obligation, because debts, but for Item 5, would be collectable or be set off against the legacies.

"Advances" is used alike with reference to both past and future. It must be taken, therefore, to mean the same as to each. This shows, especially in connection with the fact that previous advances had created debts, that the testator was looking forward not to gifts he might afterward make, but to what would be and remain *debts* but for the clause he was writing. But even if we could take "advances" to mean one thing as to the past, and another as to the future, viz.: anticipation of legacy, we reach an absurdity. Future gifts would reduce the legacies only in case that should be the testator's intention at the time of making the gifts; and we should have him solemnly providing in advance that his future intention should be utterly ineffectual.

The testator could at any time recall future advances creating debts. He could not recall future gifts whether outright or on account of legacies. His language becomes clear and consistent, as to past and future alike, if we consider him as expecting to continue in the future what he

had done in the past—hold against his children obligations for advances to them.

It may fairly be said that counsel in effect ignore Item 5 entirely, seeming unconscious of the self-contradiction in the position taken (Brief, p. 5, top) that its intention was "to convert into a gift" what he had advanced "by way of gift."

The "testator's general scheme" (*Given* v. *Hilton*, 95 U. S. 591, 594; *Weatherhead's Lessees* v. *Barkerville*, 11 How. 329, 358) disclosed by the will was just what we should naturally expect from him. His interest in all his children and his pride in the family name, which will strikingly appear hereafter, would forbid the leaving of any of his family unprovided for at his death, if either fault or misfortune should require advances which would consume their share of the estate to be divided under his will. What that scheme was can not be better described than it was done by the Circuit Court of Appeals. (Rec., 614):

> The language could hardly have been made plainer to indicate that the leading purpose of the testator was that the property which he should leave at his death, irrespective of what he might have advanced to them during his life, should be divided among the five persons named. What they should have received from him, by way of loan, no longer was to be treated as such, but was to be forgiven. He uses the word "advances" in the sense of "furnishing," "supplying," in advance of the final distribution of his will. It is absurd to suppose that he used the word as equivalent to the technical word "advancements," for, in the face of the disposition to be made of his property at his death, he must have known that, if in the meantime, he should bestow property upon them, whether by way of gift or loan, it would not be an

"advancement," as that word is used in legal phraseology. In the nature of things, it was not possible for him to have intended by "advances" the same thing as "advancements," for that involves an intention at the time of supplying the money, that it shall be such. Besides, he uses that term indiscriminately to apply to what he had given and charged to his children before the making of the will and to what he might thereafter charge them. The legacies of the equal provision were to be "in addition" to such advances, and how could the testator be supposed to have used the word "advances" in its technical sense, which involves a satisfaction or diminution of the legacy *pro tanto*, when he expressly declared that the legacies should be in addition to them? The testator intended that they should not be eaten away by what he should be moved to do for his children during his life. The will becomes operative upon the death of the testator. What this will then meant was this, whatever the testator has helped his legatees to before this time, when distribution has finally come, though then a debt, is now forgiven. It "is not in any manner to be accounted for." The equal distribution now to be made of what remains is "in addition to said advances."

SUBSEQUENT EVENTS NOT ADMISSIBLE TO SHOW INTENTION OF WILL.

The natural meaning of item 5, that the legacies under Item 4 "should not be eaten away by what he should be moved to do for his children during his life," emphasized, as we have shown, by the character and history of the testator down to the date of the will, can not be affected by anything which happened afterward.

In *Morris* v. *Sickly*, 133 N. Y. 456, 459, in which Judge (now Mr. Justice) Peckham concurred, the court said:

> While a will is in some sense ambulatory as to the objects and subjects with which it deals, yet it is not ambulatory as to the meaning of the language used by the testator and the intention and purpose which control the disposition of his property. That intention and purpose must be found to exist at the time of the execution of the will, and can not be varied or changed by any after-occurring events.

In *Barber* v. *Pittsburg, &c., R. Co.*, 166 U. S. 83, 109, the court said, by Mr. Justice Gray:

> To allow the legal construction of the terms of a will, executed and attested as required by law, to be affected by testimony to the testator's state of health at the time of publishing his will, or to the length of his life afterward, would be open in the highest degree to the confusion and uncertainty resulting from permitting the meaning of written instruments to be altered by parol evidence.

In *Painter* v. *Painter*, 18 O. 247, 263, the court said:

> The testator may undertake by a writing, which clearly expresses his intention, to explain some statement in his will, or to alter some of its provisions; but unless two witnesses have put their names upon the writing, and it is otherwise executed like a will, it can not be received in evidence. Is it to be supposed, then, that a loose declaration, or even clearly expressed wishes of the testator, not certified in the manner pointed out, can be received in evidence or be held to revoke a will or control its provisions?

In that case complainant was not permitted to prove that a statement in the will that he had received an advancement was a mistake, or that the testator had afterward intended to correct the mistake, though the dominant purpose, frequently expressed, was absolute equality among the testator's children.

That, at John's instance, what counsel call an equalizing

of the accounts of the four children was afterward made, leaving the grandchild some $70,000 behind, is therefore entirely immaterial.

But there was no equalizing, in fact, of benefits received from the father. Among other instances, John received a one-tenth interest in the Big Sandy Packet Co., for which he was charged only $1,200, and for which he received $18,000 of stock worth par, while William received $6,300 of the same stock, and was charged $6,300 for it. (Rec., 64, 80, 81.) Observe here also the enormous differences in benefits arising from the waiver of interest which are mentioned elsewhere.

We call attention here to the statement (Brief, 44) that "Mrs. Adams received $39,632.55 from her father on September 22, 1881," etc. Counsel do not quote the entries from the journal, as in many other instances, though they refer to it. These entries show that all of the $39,732.55, except $2,700, consisted of checks to her son, beginning February 1, 1881, and all before the time of the charges. The record shows (p. 469) that this grandson, about that time, went to Montana to engage in business.

Equally irrelevant are many other matters subsequent to the will, to which counsel refer, such as the alleged fact that the advancement accounts were closed when it is said that they were equalized in 1884. They were no more closed then than they had been every time they were balanced. Entries were, in fact, made in them afterward, as they show on their face. But if they had been closed, this would and could show no change of purpose on the part of the father, expressed in his will, to make further advances thereafter, if the needs of any of his children should require them. His large heart and purse remained open whether the accounts were closed or not.

The actual equalizing of the advances after the will was made would imply no abandonment of the design expressed in the will to make further advances to such of his children as required them, and thereby unequalize them again, even if any changed purpose on the part of the testator could be effected in any way except by altering the will.

The Court of Appeals said (Rec., 314-5):

> We are not prepared to say that under no circumstances could a debt from a legatee to the testator be created as an obligation independent of the absolution accorded by the will. Indeed, we think otherwise.

We do not admit the proposition that advances could be made to a child which would escape the operation of Item 5 if the will was left unchanged.

See *Needles* v. *Needles*, 7 O. S., 445.
Crane v. *Doty*, 1 O. S., 279.
Painter v. *Painter*, *supra*.
Kent v. *Mahaffey*, 10 O. S., 204.

Gifts might be made, of course, after the will, in satisfaction of the legacies. Advances which were not gifts but created obligations could not be taken out of the operation of Item 5 without permitting the scope and effect of the will to be changed otherwise than under the safeguards required by law.

We think the only question is one of description. If the subsequent transactions were advances they necessarily come under the operation of Item 5, as the will was not changed. And whether they were advances or not depends on their character, and not on the presence or absence of intention with respect to the effect of the will on them.

It is not necessary to inquire whether debts not in

the nature of advances would have been forgiven by the will, because it clearly appears that the debts with which we have to deal were strictly advances in the narrowest sense—like most, at least, of the advances made before the will, viz., money furnished so as to create an obligation to repay it if required, but supplied on paternal and not on commercial grounds.

It is the purpose for which the money was furnished which determines whether these transactions were advances or not. This distinction is, we think, what the Court of Appeals had in mind in the passage just quoted. But then the test would not be the intention of the testator with respect to the will, as it is in cases of ademption.

But let us take the case where the Court of Appeals put it (Rec., 615):

> But we think, also, that having regard to the manifest purpose of the testator when this will was made, to hold a free hand to help his children during his life as their necessities might require, and then at the end to divide what remained of his property equally among them, the court ought to require clear proof of some distinct purpose on the part of the testator during the transactions when he furnished the helping means which is supposed to have created the debt, to put that debt outside of the pale of the forgiveness which he had written in his will; and it must have been his purpose, and not that of some other. Even an expectation on the part of the legatee that the moneys paid for his benefit would in the end come out of his share of the estate would not change the situation unless the testator himself had a corresponding intent. He was the master of his fortune, and if he did not lend his money with the intent that if not repaid in his lifetime it should be repaid to his executors, then it would fall under the provisions of this

> will. There is not to be found in this record any such clear proof of the purpose of the testator to establish by the furnishing of the financial help, which he did, to his son, to establish an independent obligation on the son's part, which if not paid during his life, should not be condoned by the provision in his will.

Counsel say (Brief, 30) that the court said:

> That the purpose to create a debt as distinguished from a gift must have been the "testator's purpose, and not that of another."

The court was not speaking of gifts at all, but of debts which would survive the will as against debts which would not.

THE AMOUNTS THE PETITIONERS HAVE CHARGED AGAINST WILLIAM'S SHARE WERE ADVANCES AND BECAME GIFTS BY THE WILL.

In February, 1888, the bank in Cincinnati of which William was president failed, involving him not only in financial ruin but also in danger of prosecution in the Federal Court. He had been guilty of no intentional wrong, but was charged with irregularities in matters concerning which the banking laws are properly strict and severe. Conviction would mean infamous punishment.

William had won honors and reflected credit on the family name. He had been mayor of Cincinnati and often mentioned in connection with other offices, such as that of governor of Ohio. The bank of which he was president had stood high in the financial world. In all these things his father and the entire family had naturally taken great pride. William's threatened disgrace would be a stain upon the name of Means.

As soon as they learned from the newspapers of the bank's failure, the father and John held a conference, as a result of which John went to Cincinnati to investigate the situation (Rec., 94). He remained two days, saw William and others (Rec., 98), and on his return reported:

A. I told him of William's debt to the bank—individual debt—and what it would probably amount to, and that friends here advised that it was for William's interest that that debt—individual debt—should be paid. I told him that the securities which William had turned over to the bank as security on the debt would, some of them, probably be sacrificed at a sale here—that I thought we had better pay the debt.

Q. What did he say?

A. He said that he was satisfied to do whatever I thought was best. * * * * I can not repeat the conversation between us any more than give the general result of it." (Rec., 96.)

John testified five years after the event. His letters at the time show that what the father said was "to do as I think *best for you*." (William.) (See letter February 23, 1888, quoted below.)

Two days later, February 15, John returned to Cincinnati to carry out this direction of the father. There can be no reasonable doubt, in the minds of men accustomed to judge of human conduct, that the father's intention was to treat William as he had often treated John when he had met with losses, as he had treated Culbertson, and as he had always shown himself ready and willing to treat any and all his children in need or misfortune.

John had found that William was indebted to the bank on various notes, as maker and endorser, to the amount of $125,911.74, including interest. The bank held securities

belonging to William of the face value of $182,350 (Rec., 93), and of a then estimated saleable value of $146,236. (Rec., 387.) If these securities were not taken up a forced sale would result in a great sacrifice; and if William's debt to the bank was left unpaid, it would reflect seriously upon him. It was believed, too, that if the debt was promptly paid in full, criminal proceedings would be avoided. John, therefore, acting under his father's direction, "to do what was best for William," on the day he arrived paid the notes held by the bank and took up the collaterals.

It is not claimed that there was then any agreement or understanding whatever as to William's interest in his father's estate. *This was not then thought of or mentioned by any one.* The only purpose was the *prompt relief of William from embarrassment and danger.* John returned to Ashland the next day, February 16th, taking with him the notes he had paid and the collaterals, on some of which $28,800 was realized on February 17 and 20. (John's letter February 21, Rec., 108.)

William remained in Cincinnati to meet the situation as best he might.

There had been no suggestion whatever of a note, due bill, or even a receipt down to this time.

The same day, February 16, (Rec., 216) John wrote William from Ashland: " * * * Have been busy this afternoon making entries of my transactions yesterday, examining, sorting, and listing notes and collaterals. My payments yesterday for you amounted to $125,911.74. *I think you had better send me a note at one day in father's favor for the amount. Had a talk with E. F. Williams on my way up, and when I explained to him he agreed with me that this is best to close up the matter at present. He may*

write you. Will [illegible] to send you $1,000 to-morrow or next day."

E. F. Williams, who was the personal friend and attorney of William was much concerned about the effect upon William's private fortune of the claims of other creditors, and especially from threatened suits by stockholders and others for damages resulting from William's connection with the alleged irregularities in the management of the bank. He testifies (Rec., 216) that he agreed with John to have William sign a note for the amount paid, "so as to protect his interest in the estate against the attack of creditors."

Q. 117. Was anything said at that time as to whose benefit it would be for that it was protected?

A. William Means.

Q. 118. Was anything said at that time as to the matter of enforcing that claim as against anybody else but the creditors, as against William Means himself?

A. The claim was not to be enforced against William Means. The note was given for his protection alone, etc. (Rec., 217.)

John's letter, of February 16th, was not answered. February 20 (Rec., 108) John wrote William enclosing "forms which explain themselves," which he asked William to "copy, sign and return to me," &c. He adds, "I also think it best for you to have as herewith indicated *fearing suits be brought against you and other directors which may give you trouble as it now stands.*" This is clear confirmation of Williams.

What the forms were, which John sent, appears from William's answer, February 21 (Rec., 115), in which he enclosed due bill dated back to February 15 for the $125,911.74 (Rec., 163), receipts for $700, $1,200 and

$1,000, and a power of attorney to sell the securities pledged at the bank "to secure the payment of my notes and of notes endorsed by me, *which notes you have thus paid* to the amount of $125,911.74"—"*all as requested by you.* I fully agree with your action in the premises *as the best preparation for the civil suits which are likely to follow.*"

William did not send his note on receipt of John's letter of 16th, in which he did not explain the reason for asking it but merely said that Williams and he had agreed about it and that Williams would probably write. In view of these letters written at the time, it appears to us useless to compare the recollections of John and Williams after so many years.

As soon as John explained the purpose of the note in his letter of 20th, William promptly sent it, acquiescing in the reasons. That those reasons related to claims of creditors is plain from one further fact alone, viz.: When the note was given, February 22nd, *it was for the full amount paid by John*, $125,911.74, although William was then entitled to credit for $28,800.

John had said in his letter of February 20th: "Father is growing more feeble and almost blind. He has seen his children and others for the last time, unless an operation restores his sight again."

To this William replied in the above letter, after expressing his regret at his father's condition:

"Every word you write on the subject only adds to the oppression I feel in connection with my own calamities, which are more crushing than I can express, and cause me to look with envy on any one who is ready to lay down his life for the life to come. There is no language to express my sense of my condition, which I could even bear

were not others called upon to share the burdens. I do not like to be alone, yet it would appear as 'twere better for all who are near and dear to me that my troubled existence should end in absolute isolation."

John also wrote William, February 21st (Rec., 107), and the two letters crossed. John repeated the mention of the note, specified the securities already sold and asked for a request from William to his father for the latter to protect William's two notes for $6,000 and $9,000, at the Ashland Bank, with authority to sell or collect the securities therewith. The first note fell due February 21st and was then paid.

These William sent accordingly, February 23 (Rec., 116), showing that the securities were 220 shares of Metropolitan Bank stock; $10,543.64 was realized on this stock. (Rec., 361.)

On the same day (Rec., 361) John answered William's of the 21st, from which we have quoted. He says the father "keeps cheerful and contented, walks out every day if good weather, some one taking his hand as he walks. *Have explained to him my action in your affairs, amounts paid, how obtained, the advantage of saving securities pledged from being sacrificed,* &c., &c. He understands all, but soon forgets details, so that I have to explain again when next I see him, *and always ends by telling me to do as I think best for you.* I wrote you not long since as to father's prize in Maggie as a daughter, and assure you that you have in her a sister to be proud of as well. Many here have kind words to speak for you—more than I can mention. With the many warm and able friends who have shown themselves in the past few days, don't be discouraged, but *cheer up for the sake of your family. I don't think they feel it a burden to share your trouble. It is not that we*

do for ourselves, but what we do for others will give us most pleasure to think of. Keep me advised of your needs for money and I will try to keep you from trouble on that account. Just now the amount borrowed engages my attention, but I hope soon to have under my control. Yesterday I paid a hundred thousand, so you see I am not in a hole. All well at home." This $100,000 was the repayment of loans made from Sinton and Hanna to raise the $125,911.74. (Rec., 359).

John's letter, February 24th (Rec., 362), recites the securities William had handed him in addition to those "lifted" at the bank February 15th. They were $53,050, face value. He adds: "*I think it may be prudent and safer* to send me authority to dispose of these like that sent in regard to the others. *After the storm blows over we can arrange about them.*"

Counsel say (Brief, p. 20), quoting John's testimony, that "the storm" was the threatened criminal proceedings, but as these could have had no connection with the securities, and had not yet been referred to in any way, the storm was manifestly the threats of civil suits which had been mentioned in the talk with Williams and in various letters.

John's letter shows he left next day, 25th, for New York. He returned March 3, and March 5 wrote William (Rec., 362). He inquires about another note at the Ashland Bank for $1,200, endorsed by William, which William had never mentioned. His letter and William's reply show John had paid $1,000 more to one of the attorneys who was acting for William. William sent a receipt for it. His letter was written from Yellow Springs, where he had taken refuge for a time from his troubles and consequent prostration.

It will be noted that down to this time *there was no word or suggestion as to the form or character of the transactions, except about taking notes as a precaution against suits by creditors* and receipts for the smaller amounts paid out.

March 9th (Rec., 363), in a letter explaining the entries he had made and the items, John says "I have opened current accounts to keep separate from accounts of advancements to us. It will be well for you to preserve this letter, as in the event of anything happening to me it may be needed and used as evidence *for the benefit of yourself and family.* I would like to know whether what I have done in the matter is satisfactory to you, or have you suggestion to make as to changes in the shape of accounts, &c., &c."

John also writes, "Let me know of your needs for money that I may *keep you supplied.*"

In reply William writes, March 15th (Rec., 116), that "not being well and a good deal disturbed by recent events, am not very capable for business," etc. "I can not now make you any suggestions as to your manner of keeping accounts, which I doubt not are in every way as they should be."

The various letters following relate simply to details of the business of taking up William's notes and collaterals, John's interviews with the attorneys, &c. They show that John was pursuing the father's direction to "do what was best for William" in his trouble, and was taking the initiative himself. Thus March 21st, (Rec., 365) he writes of hearing, while in Cincinnati (William was still laid up at Yellow Springs) of another note at Circleville which he had asked to have held, and asks "Have you any other notes out? If so advise me what, to whom, &c., &c. It

may be *best for you* that I pay or buy them up to secure the collaterals."

Some of the letters refer to attempts to secure political influence to prevent prosecution. See letters of April 16th and May 14th. (Rec., 135, 192.)

William's letter, July 12th (Rec. 130), first mentions the Labrot trust which will figure later. He wrote:

"Now, John, this will only add to your burdens, already too great, but I have no one else to go to, and excepting for the trouble it is to you would wish no other confidant. When the bank troubles came on us, almost all this trust was swamped with everything else. I had intended holding everything I had, and everything that might ever come to me as sacred to this trust, but felt compelled to surrender with other directors such things as we handed to the examiner in order, if possible, to stave off the coming calamity. When the crisis came, my only thought of help in this was through you and father, *but had not collected myself sufficiently to act, when you suddenly paid in the* $126,000 *and frightened me still further as to this trust.* Since then I have endured constant agony, the matter never being absent from my thought during the day, and in my dreams and waking moments at night.

* * * * * * * * *

"*I rely so much on your sense and heart, that I find some relief in coming to you with this great trouble, in which you seem to be almost a parent as well as brother.* And you can not imagine the sense of relief I should experience if I could feel that this additional weight will be lifted off me. *I have nothing to offer you in return but gratitude and brotherly love. I have nothing to tempt you with, but there may be in the future something I can do for you or yours that can not now be conjectured, and this is my hope.* Words are inade-

quate to express my feelings, but I can never forget *your labor of love.*"

July 17th, (Rec., 119) William writes:

"They would not expect me to attend to details until in a proper condition of body and mind, which can be managed. I am as well as could be expected, though held down by mental troubles, and wondering if the day will ever break for me again."

July 18th, (Rec., 368) John writes he will make a remittance to the Labrot heirs and, mentioning efforts to sell some of William's mining stocks, through Col. R. S. Bright, says:

"After this has been done can better help you in the Labrot matter, and it is probable we shall be obliged to put in something on the trustee debt of ($110,000) at the M. N. Bank as action of McConville and Burnet may hinge upon it."

He adds, still speaking of the Labrot matter:

"You can depend on Mary, Maggie and myself in money matters, but father's affairs I must handle with the care of an executor, and probably before no long time as one under a Probate Court. Am glad you have written as to the amount of the Labrot trust, since it shows me what we must be prepared for, and if not to be paid in a short time with aid your sisters can give, and I know both are willing, we can settle it up and get it off our hands. I think now it is best to get all your matters settled up as quickly as may be done."

October 1st (Rec., 385) John writes:

"*Stockholders and others interested in the M. N. B. have an idea that you are to inherit a great estate some day and are urging the agent, McConville, to take judgment against you, on which it is hoped to squeeze us now or realize in*

future. I find that it is necessary that you resign the Labrot trust, and another be appointed with whom I must in some way arrange for the paying off the trust a large amount of money. Unless you come here with Maggie, I can not do anything, and money paid is lost as far as doing *you any good or us any good* in this matter. We are ignorant as to the terms and condition of the trust, as to what you owe or what you have belonging to it. Don't even know to what court to look to find it, nor who are your securities, and it is simply impossible for us to act for any benefit. I notice in yesterday's *Cincinnati Post* 'Means bonds forfeited for lack of renewal, &c., &c.' I wire C. M. H. to-day for information. If you delay and crowd too much work into a few days, it may be too late to do any good, or at an increased expense which may be beyond my ability to provide for."

October 4th (Rec., 385) John writes:

"My references to trust last week meant the Labrot trust, as I shall have to settle that either through Maggie or Tom Adams. You should tell Maggie all about it."

Counsel have devoted some thirty pages of their brief to establishing a proposition we have never denied but have always expressly admitted, viz.: that the payments made on William's account in this trouble created *debts* from him to his father. As they plainly were not intended as gifts, either outright or by way of advancement, debts necessarily resulted. How the intention not to make gifts of any kind appears is quite immaterial. Merely charging them in a business account sufficed, as above shown with respect to previous advances, and the father could have required payment at any time if he chose. The taking of notes as an after-thought, no matter what the

motive, could not change the character of the transactions. If the amounts had been intended as gifts when paid, the subsequent notes would have been wholly without consideration. If they were not intended as gifts the subsequent notes merely expressed obligations already implied.

What counsel must show is not that these payments created *debts*, but that those debts did not arise from *advances* and did not come within the absolution written in the will.

Now advances, as the Court of Appeals held, include whatever was furnished or supplied William; and the fact that they were so made as to result in debts did not make them any the less advances. "The giving of the notes would not of itself alter the character of the advances." (Rec., 617.) "If they were intended as loans for the time being, as no doubt they were, there was nothing out of the way in taking notes for them. But in the original and main transaction even this was not done" (id.).

As before shown, "advances" is a term broad enough to cover all sorts of obligations arising from the furnishing or supplying of money or property, including loans. Thus one makes advances on an unperformed contract, on a promised shipment, on a note or security, in the case of a stranger, because for some business reason he has faith in the stranger doing the thing expected. A father may have a purely commercial transaction with a child, as where he sells him property for full value and takes his obligation for the price. But let us assume, for the sake of the argument, the narrowest meaning of "advances"—benefits which a father is moved by affection to bestow on a child, a family, as opposed to a commercial, transaction. The father has faith in his son's future. Strangers may have

faith in it, too, but they will not advance money or property on it as the father does. If he charge it in his regular accounts, or take a promise in the form of a note or otherwise, it is none the less an advance. This simply shows an intention to retain "power" or "control" over it. He may at the time and always entertain the expectation not to require payment but to deal with the matter in the division of his estate by will, or by leaving it to the law without a will. It is not the present but the future which the father regards, and the form in which his power and control are put is of no consequence. Notes at one day for large amounts from an insolvent son do not differ from debtor charges of the same amounts. Both are evidences of debt. In both the expectation of payment when due is lacking. Surely the advances made before the will would have been none the less such though notes at one day had been taken for the several items or for the balances struck and carried forward from time to time. And they would as surely have been turned into [illegible] on the father's death by force of his will.

Counsel are fully aware of this and make (Brief, 2) the assertion, which they often repeat, that William "*borrowed*" these sums (greatly exaggerating their amount by adding the total amounts, ignoring large credits applied on some before others were incurred, and ignoring the fact that some of them overlap each other) and that the transactions were "*loans.*" They seek by this to give them a strictly commercial character and to ignore the moving of the father's heart which gave them exactly the same nature as the advances already made and put them among the advances contemplated by the will.

William did not borrow the $125,611.74. It was in fact paid without his knowledge and even without his en-

tire approval at the time, as the passage above quoted from his letter of July 12 shows: "When the crisis came my only thought of help in this was through you and father, but had not collected myself sufficiently to act when you suddenly paid in $126,000.00." He did not borrow any of the other amounts. They were not *loaned* to him. They were paid for him and on his account and he became liable for them, with or without the notes afterward given, but they were *advances*—family and not business matters.

Being therefore, exactly the kind of obligations forgiven by the will, it might well be maintained, as we have said above, that only a change in the will could avail to deprive them of the forgiveness. But if it be a matter of intention, that intention *must have been the father's* and the one *which was impressed on the transactions at the time they took place*, as the cases above cited show.

Searching, then, for evidence of an intention on the father's part to make advances which should not come within the absolution written in his will, we find that there was not the least hint of such intention, by any one, at the time the several advances were made down to the date we have now reached, October 15th. John's reference, March 9th, to the mode of entering the advances is entirely too vague. It was not made as a statement of intention to reduce William's share under the will, even if John's intention were the one to be sought, and William's answer, March 15th, shows he did not so understand it. Even when John, October 1st, mentioned the expectation of stockholders, &c., that William "would inherit a great estate some day," and their consequent desire for a judgment against him, he gave no intimation of a design to charge these advances to William's share, as against him. *It in no way appears that the father had ever thought of such a thing then, or ever did so later.* In fact

the answer merely avers (Rec., 23) an agreement and intention between *John* and *William* and does not say the *father* ever knew, authorized or approved.

On October 15th the following advances had been made, the statement (Brief, 22) being correct:

February 15.....	$125,911.74	—note given Feb'ry 22
March 19.....	15,027.00	—note given October 22
August 20.....	5,041.67	—note given October 22
September 25.....	7,400.00	—note given October 22
Total.....	$153,380.41	
Less realized on securities to that date.....	30,800.00	Notes all dated back. See letters of Oct. 15 (*Post*) and Oct. 22 (Rec., 187).
Balance.....	$122,580.41	

See credits endorsed (Rec., 163 *et seq.*)

On this day, October 15tl. (Rec.. 165), John writes, speaking of the Labrot trust, "I can't help but be uneasy about this matter. A large sum of money must be paid, and soon. *If not settled in father's lifetime it will be bad for you.*"

Counsel omit this part of the letter in quoting from it. (Brief, 25). It is easy to see why. This passage could have but one meaning. If this liability should be met by an advance by the father in his lifetime, *it would be forgiven by the will.* If not, William would have to pay it himself *out of his share of the estate*, for he had nothing else in prospect at his age.

The passage quoted by counsel is, "As the intention of creditors to take judgment against you is apparent, they hoping to get them out of father's estate (your share), Moore & Hager advise me to take your notes in his favor *at one day* for payments made. That under his will as written it is doubtful whether we could hold claim on an account," etc. This shows on its face persistence in the original design of foiling creditors in their attempt to reach

William's share, but taken with the preceding part quoted above, all possibility of doubt is removed, that this and nothing more was what was in the minds of all parties.

As showing the continued family and uncommercial character of these advances, note the passage at the end of this letter: "You will find items *paid* in father's account *which I do not think I have advised you of*, as to interest and exchange."

Whenever it was that Moore & Hager suggested and prepared the form of paper charging notes on William's share, certainly they were not sent to William, who had been in New Haven, Conn., since the summer (see letters of August 5th and October 24th (Rec., 186, 193). They were not used with the notes sent in letter of October 22d.

October 20th, referring to the Labrot debt, John writes (Rec., 374): "Maggie, dear girl, would sacrifice her whole fortune if you needed it, but this you would not wish done, neither would I permit it to be. *I think we can pay your debt, but I shall do so in such a manner that the amount shall not be a dead loss to ourselves nor to father's estate.*"

This plainly refers to making the most of securities, etc., so as to reduce the amount required. The fact that nothing is said about charging the payments to William's share, when it would have been natural to speak of it, is significant.

October 24th (Rec., 186), William replies:

"Of course I do not know what our sister Maggie has written you, but I do know how great her heart is, and how kind she as well as all of you have been. I will depend on you to protect her against her own generous impulses when I am concerned, as I should be greatly distressed *if I thought her making all the sacrifices for me.*"

This shows how William understood the letter to which he was replying.

November 3d (Rec., 394) John first mentions his scheme to secure a dismissal of the prosecution by paying $75,000 to the agent of the stockholders of the bank, and asks William to send his note at one day dated November 1st, the day he had made the deposit of $75,000.

John's letters of November 16th and 28th (Rec., 375–6) show that the intention always was to have Margaret advance the amount required to settle with the Labrots. The mention of settlement afterward relates to her only.

The letter of November 16th is the first which refers to Moore & Hager's form of note which John suggests be used for the $75,000, deposited to stop prosecution.

November 19th (Rec., 376) John, in asking for a note for $1,620, advanced, says: "Better use form by Moore & Hager." It was used only for this note, the $75,000 note (dated back to November 9th) and the $45,000 note (dated November 22d) being for the last three advances made, save that of December 3d for $2,713.88, the last, on which it was not used (Rec., 162–5).

We have thus gone through all the letters, omitting none which throw any light on the matter, from the time of the first advance to the last advance—nearly ten months—because they must certainly prevail over the mere inferences and recollection of a witness speaking long afterward and pending litigation, when the good father had gone and the noble family spirit with him. They fully justify what the Court of Appeals said of them (Rec., 617): "He (John) speaks in them of taking notes, but there is no intimation that they were to be taken for the purposes for which they are now sought to be used, and so of the

pledges attached to some of the later notes. They signify, on the contrary, that the object was to put up a bulwark against the attacks of creditors," etc.

Among the charges made against William's share on account of these advances are the following:

Balance of $125,911.74 note, with interest.....	$51,677.90
Balance of the $15,027 note, with interest	6,583.64
Amount of the $5,041.67 note, with interest..	5,685.32
Amount of the $7.400 note, with interest.....	8,301.56
Amount of the $2,100 note, with interest.....	2,345.70
Amount of the $497.13 note, with interest....	554.04
Total.....	$75,148.16

All these advances were made before there was any suggestion of charging them on William's share, whether that suggestion, when made, was with a view of protecting his share from creditors or of charging it. If John had any idea of making such a charge during this period it was never clearly disclosed. On the contrary, the remarkable passage in his letter of October 15th shows he then had no such idea. The Court of Appeals justly said (Rec., 617): "We greatly doubt whether John Means had at any time (viz., during the transactions) any desire or intention to treat the advances made for William as excluding him from his share in his father's estate."

Long after all the advances had been made, April 18, 1889, John wrote William (Rec., 377), "*My own selfish interest was against any payment. Have done what I did for your benefit only.*" How could this be true if all payments were on account of William's share? They knew it would be large enough to cover them, considering his securities which were obtained.

That at a much later period such intention was formed by John and his son and nephew, who became adminis-

trators with the will annexed, is equally clear. *But there is nothing to show that the father ever, at any time, had such purpose.* The testimony is undisputed that he retained his faculties until the summer of 1889, when he became imbecile. (Rec., 103, 121, 471–2.) His acquiescence, according to John, in John's method of keeping the account of these advances, was given at the time they were opened. The vague account of this given by John does not inspire the highest confidence, considering John's interest and present feelings toward William's family. See comment of Court of Appeals on John's testimony on this subject. (Rec., 616.) But assuming that such acquiescence was given, it must have been on the theory that it was necessary, like the giving of the notes, *to protect William's interest, not to consume it*, for we have shown that *at that time John himself had no other purpose.*

We submit that the record amply justifies the finding of the Court of Appeals (Rec., 615), "but there is not much, if anything, in all this, or in anything else disclosed by the testimony, to prove that Thomas W. Means had a purpose to banish William Means from his favor, and isolate him from the benefits of the plan of distribution of his property after death, which had become the settled purpose of his life."

"He knew that his son was in financial distress, and he came forward, as was his wont, to help him out and re-establish him on solid ground. We are fully persuaded that we do him exact justice when we refuse to believe that he had then (at the time of the advances) any thought of inaugurating a new plan of dealing with William's expectancy. And if he did not then have such purpose there is nothing in the evidence to justify the belief that he at any time afterward formed one." (Rec., 617.)

The items, other than those amounting to $75,148.16 above given, which make up the $136,035.75 charged against William's share by the Administrators are:

On note for $75,000, dated November 9, 1888...	$6,075.50
On note for $1,620, dated November 17, 1888...	1,803.33
On note for $45,000, dated November 22, 1888..	49,995.00
On note for $2,713.88, dated December 3, 1888..	3,013.26
	$60,887.09

The total is made up of the two classes as follows:

Total of advances before mention of charge against William's share	$75,148.16
Total of advances after mention of charge against William's share	60,887.09
Total.....	$136,035.25

Let us now consider the items of the second class.

The first item is $6,075.50 interest on the $75,000 deposited to stop prosecution. The deposit was made November 1, 1888. It was John's check for $25,000, and Sinton's acceptance for $50,000. (Rec., 92.)

The agent of the bank collected the check, for some reason, but not the acceptance, which was simply held and returned February 28, 1890. The acceptance, therefore, could not be the subject of any interest charge. Yet this item is 6 per cent interest on the entire $75,000 for the whole period, one year and four months! While John (id.) speaks of Sinton's paying the $50,000 back on the return of the acceptance, it does not appear that this amount had been deposited with Sinton in money. If in securities, they drew interest, and even if in money, no circumstances are shown to justify a charge for interest.

In this connection we call attention to the fact that of the $136,035.25 charged against William's share by the administrators a careful computation shows that $26,635.61

was for interest, mostly for time before the father's death, although he had never in his life charged any of his children interest on his advances to them, and there is no evidence of a different intention on his part here.

The second item is for the $1,620 advance of November 17, 1888, with interest.

The third item is for the $45,000 on account of the Labrot trust, with interest from the date of William's note, dated November 22, 1888, amounting to $4,995. The plan for meeting this debt was for Margaret to give her note to the Labrots and the father to give her his note. (See letter November 28th, *supra*.) Margaret never gave her note at all. John claims he executed a note to her as agent for his father, but she never saw it. He says he "probably" put it among her papers in the bank and that when the $75,000 deposit was returned, February 28, 1890, he got the note and paid it to her. (Rec., 426.)

Margaret did pay the Labrots after the father's death, and then undoubtedly became William's creditor for the amount, with interest *from that date*. But the only consideration for a note from the father to her was to be *her note to the Labrots, which she never gave*. (Rec., 426.)

It is admitted by counsel (Brief, 35) that the father never knew anything about the Labrot matter, that he was "on the verge of imbecility when the note was executed to Margaret, and a confirmed imbecile, under the care of a committee and incapable of making a gift when the money was paid, February 28, 1890." Then, by the same token, John's authority was revoked when he undertook to pay this money to Margaret on a note which would have been invalid even if delivered, because it was wholly without consideration.

We are not seeking to exculpate William from any just

obligation, but merely to show that his real creditor in this instance was his sister, not his father.

The amount of this interest charge can not be justified on any theory. The money was not paid by John until February 28, 1890. The interest to the father's death, June 8, 1890, would be only $735, and to the time the charge to William's share was made, October 6, 1890, only $1,620. The amount charged was $4,995.

The fourth item is the $2,713 advance made December 3, 1888, with interest, making in all, $3,013.26. The notes given for the last three preceding items contained the charge on William's share. The note given for this item did not, though it was given after the others.

If counsel rely on the clauses in the three notes which purport to charge them on William's share, the amount actually charged can not be justified, as it included every advance made and one which was never made, as well as those three.

If their reliance be on the paper William gave after his father's death, directing that all the advances be so charged, the fact that it was wholly without consideration and was given after William had parted with all control over his share, as will appear later, deprive it of all force and effect.

THE INTENTION OF THE TESTATOR IN ITEM 5 WAS TO INCLUDE ALL ADVANCES WHICH HE MIGHT THEREAFTER MAKE.

Counsel suggest rather than argue, quoting from Judge Barr (Brief, 55), that the advances in question are not covered by Item 5, because they were not charged against William on the books.

The will recites that the father had made advances to

his children, which are charged to them on his books. We have already seen that these charges covered every transaction of every kind up to that time between him and his children. So it is clear that he meant to discharge them from every sort of obligation incurred up to that time. We have seen, too, that he took the pains, when he drew his will, to discharge Culbertson by a separate release.

It declares further that he may thereafter make advances to his children which may be charged on his books. This clause of Item 5 was merely a *recital* of his past dealings with his children and his expectation to continue them. He, therefore, in view of his previous habit, naturally mentioned charging in his books as a *circumstance*. But when he came to the *directing* clause, *he did not declare this as a condition*. Mark, he did not say, advances "that may hereafter be made, *and that may be charged on my books*," should be treated as executed gifts. The omission of this latter clause shows that his purpose was not so to limit the advances to be discharged, but was to cover all advances in the future just as he covered all advances in the past. He did not say he intended to charge in his books such future advances as he meant to forgive. No such distinction was in his mind.

In view of the character and purposes of the testator as disclosed by the record, the design of discriminating among future advances according to the fact of their being charged on his books or not, can not reasonably be imputed to him without a clear expression in his will.

This court, by Mr. Justice Harlan, said in *Gilmer* v. *Stone*, 120 U. S. 586, 590, speaking of evidence showing the history and situation of the testator:

> The purpose of it was to place the court as far as possible in the situation in which the testator stood,

> and thus bring the words employed by him into contact with the circumstances attending the execution of his will. * * * * The law is not so unreasonable, says Mr. Wigram, as to deny to the reader of an instrument the same light which the writer enjoyed.

Reading the language of the testator in this light, this court said by Mr. Justice Matthews in *Robison* v. *Portland Orphan Asylum*, 123 U. S. 702, 707, that the court "will so mould the language of the testator as to carry into effect, so far as possible, the intention which it is of the opinion that he has on the whole will sufficiently declared."

But if charges were the test the result would be the same, *for charges were made on his books of every one of the advances in question*, which answered in substantial form all the requirements of the will so construed. The notes in every instance followed (Rec.,427, Q. 719)—always some days, sometimes some weeks or even months after the advances had been *made and charged*, and were the result of after-thought. These notes so given did not in any manner change the original nature of the transactions or the effect of the charges on the books, but the charges stand just as they would stand if no notes had been given. The fact that John saw fit to charge these advances in what he called "current accounts," makes no difference. John testified that he considered the old accounts closed, and counsel claim that they were closed. These accounts were in the same book. One was with John (Ledger, 243), the other with William (Ledger, 223). In them are charged and credited promiscuously the various advances and sums realized from the sale of William's securities from time to time. The notes he afterward gave for the advances are included in them. Taking these two accounts together,

John being the agent of his father in the matter, they are exactly the same as a single account between the father and William.

Surely the benign purpose of the father as expressed in his will is not to be defeated by John's manner of bookkeeping.

A significant circumstance in connection with these accounts is that John says in his letter to William, October 15, 1888 (Rec., 166): "Your account with father and myself and account '*Adventure Cincinnati*' sales and disposition so far as made of stocks, etc., received from the Metropolitan National Bank receiver—and from yourself." He also calls attention to "*father's account*," but no such accounts have been produced, though all accounts were called for. The father's ledger account furnished closes September 8, 1880 (Ledger, p. 311). John also refused to produce a certain letter from William. Our reference for this is to a part of the record not printed, to which counsel also refer (Brief, p. 58, for Q. 157).

The evidence fully warrants what the Circuit Court of Appeals said (Rec., 615):

"It does, indeed, appear that by the father's acquiescence upon the suggestion of John, who had the handling of his father's books, the account of these transactions was entered in a distinct place in these books and they were kept separate from the former accounts with William. But there is not much, if anything, in all this, or in anything else disclosed by the testimony, to prove that Thomas W. Means had a purpose to banish William Means from his favor or isolate him from the benefits of the plan of distribution of his property after death, which had become the settled purpose of his life. *It was immaterial to that purpose in what book or how the account was kept.*

Whenever and however kept, the charge would fall under the provision of exclusion by the will in the end, and the details of the bookkeeping he may well be deemed to have left to John, who had all such matters in charge. He had himself become blind and incapable of supervising his books in person, and as he confided in John there was no reason for his going over them with the help of others, even if we assume that there was something on their face which disclosed this extraordinary purpose, which, indeed, we think is contrary to the fact." And, after quoting from John's testimony: "As the father undoubtedly intended to keep it as an indebtedness, John's statement to him imparted nothing more than the mere question as to the best mode of doing the business 'in the shape to indicate and show an indebtedness,' and there is nothing in the very full detail of testimony given by John to show that on any occasion the idea of establishing an indebtedness beyond the scope of the will was ever broached to his father, or that anything ever fell from him to show that such an idea had occurred to him. There was no suggestion by John to William at the time when he came to his relief, that anybody expected that the money which was being supplied to him by his father was to be put beyond the operation of the will, or would stand on any special footing in that regard. On the other hand, we think the moral probabilities are all against the appellees' contention."

DOCTRINE OF ADEMPTION NOT APPLICABLE.

We can not understand why counsel speak of ademption. The question of ademption could arise here only in case of gifts. Counsel claim and we admit that we are not dealing with gifts; and they admit that if the advances in

question had been gifts they would not be chargeable against William's share.

The earlier rule in England that the doctrine of ademption does not apply to residuary legacies (see Lord Hardwicke in *Farnham* v. *Phillips*, 2 Atk. 215) has been abandoned there. See *Thynne* v. *Glengall*, 2 H. L. Cas. 131. It prevails, however, in some of the States. See 9 Bush 95, 13 id., 51; 3 Sneed 235; 17 Ind. 159; 38 Ark. 449.

But everywhere and always the question is merely whether the intention was to anticipate the legacy by the gift. And the intention must have been *the testator's*. Even in case of a specific legacy, which is always held adeemed by a sale of the subject, its sale by an agent without the testator's direction was held not to adeem, but the legacy was made good out of the general estate. *Patton* v. *Patton*, 2 Jones Eq. (N. C.) 494.

The position of counsel seems to be that John's agency included the right to adeem or satisfy his father's legacies. If such power can be delegated at all by a testator, it certainly was not covered by the power of attorney to John, which was plainly intended to cover only ordinary business matters. (Rec., 115.) So extraordinary a power as that assumed by counsel would require express mention.

Besides, the doctrine of ademption is founded entirely on a presumption that double portions were not intended. It may well be doubted whether sums advanced by a father to save a son from disaster and the family name from stain would be held to be a "portion," which means a provision of some sort to be taken and held by the child, not money spent for his relief from trouble. But in view of the terms of this will, we do not see how those advances can be presumed to have been intended to be in satisfaction of William's equal residuary share. On the

contrary, the presumption is the other way, and clear proof is required to overcome it, if, indeed, mere evidence can prevail against this will at all.

The cases cited under this head are, of course, all questions of *gifts*.

Richards v. *Humphreys*, 15 Pick. 133, however, announces well-settled rules which have a strong bearing on this case:

> 1. "Nor would it be admissible to show such declarations alone to prove the direct intent of the testator to revoke or adeem a legacy. It would be, in either case, to make and revoke a will by parole, which is alike contrary to the general rule of law and to the statute of frauds. But when the act is done * * * * evidence of declarations of the intent may be given to qualify the act," etc.

The declarations received were "*made at the time of the advance and payment of money*" (p. 139).

> 2. The question "depends solely on the will of the testator." The legatee was a married woman whose release was claimed to be invalid. But "had the money been paid to trustees or others for her benefit, without any act or consent of herself, if given expressly in lieu or in satisfaction of such legacy to her, it would have operated as an ademption."

In *Quarles* v. *Quarles*, 4 Mass. 680, a case of intestacy, the father's deed of conveyance and the son's deed of release of all right of inheritance were contemporaneous, and held to be in effect one instrument. This was held to bar the son's children under the Massachusetts statute of advancements, the son having died before his father. This decision was by a divided court, and is not followed in Ohio. See *Needles* v. *Needles*, 7 O. S. 432, 446.

The notes given for three of the last advances, which

contain the clause purporting to charge the share, like all the other notes without exception, were given after the advances were made.

The paper of June 16, charging all the notes on the share, and that of October 16, receipting for them as payment thereon, were not only given long after the advances, but after William had made an agreement to transfer his share to the trustees, which, of course, in equity, was equivalent to such transfer.

WILLIAM'S AGREEMENT TO ASSIGN HIS SHARE TO TRUSTEES FOR HIS FAMILY.

After all the advances had been made it was thought best to send William abroad. He went, and remained one year. He had turned over all his property to John, and it was understood that his family, which was left behind, should be provided for. Because this was not done, or not properly done, and for other reasons, dissensions arose between William's wife and John. On William's return trouble broke out between him and his family. His wife made claims for alimony and for her separate estate, of which he had charge, and there were other causes for the feeling which became bitter.

As the Court of Appeals truly found from the evidence, "Since his (William's) downfall he has been broken in spirit and wavering in his purposes." (Rec., 620.) "He seems to have been unsteady in his course, sometimes inclining strongly to his father's family, and seeming to be anxious to secure their affection and favor, and willing to do as they wished to that end. At other times he turned to consider the welfare of his own family and his own obligations toward its members." (Rec., 619.)

In February, 1890, in settlement of these troubles and

claims, as well as to make provision for his family, he finally agreed to transfer his share in his father's estate to trustees. (Rec., 293, 455, 579, 595, 274.)

Counsel do not now deny that such an agreement would have been valid. It would, of course, create a mere equity and no conveyance could be made until the expectancy became an estate. But the assignor, when he receives the estate after such agreement, holds it as trustee for the assignees.

It is well settled that such agreements are always upheld in equity, especially when they are family settlements.

Hinkle v. *Wanzer*, 17 How. 353 and 368.
3 *Pomeroy's Eq. Jur.*, sec. 1270.
White & Tudor's L. C. in Equity, p. 1606.

The evidence that such an agreement was made is conclusive.

In an account of an interview with Mr. Glidden in January, 1890, on the subject of Mrs. Means' claims, etc., Mr. Hagar says (Rec., 580) Mr. Glidden said that "the expectancy might be the subject of an equitable settlement upon the part of Wm. Means upon his wife and members of his family," etc.

We are, therefore, prepared to find this idea carried out.

The decree against William shows that such an agreement was made during his father's lifetime. *The entire record was put in evidence by these petitioners themselves* (Rec., 456), doubtless with the idea of attacking it for collusion as averred in the answer (Rec., 27), or to show knowledge by the trustees of the fact they set up in that case that William was insolvent. Whatever the reason, it was put in generally, without any restriction. It included the peti-

tion whose averments the decree expressly found to be true. One of them was that the father "was then living," viz.: when the agreement, whose exact date is not stated, was made, which was the sole basis of the suit, and whose specific enforcement was the only relief asked or given.

The pleadings must always be considered with the decree to understand its effect, as this court held by Mr. Justice Story in one of the cases cited by counsel (*Owings* v. *Hull*, 9 Pet. 607) in which the objection sustained by the court was to the use of depositions, etc., improperly included in the transcript. (See pp. 610, 622.")

When a judgment is the source of title the record of it, including the pleadings as held in *Owings* v. *Hull*, is always admissible against strangers, though not conclusive as to them.

Barr v. *Gratz's Heirs*, 4 Wheat. 213, 220.
Burton v. *Forsythe*, 20 How. 532.
Dirst v. *Morris*, 14 Wall. 484.

The cases cited by counsel (Brief, 57) did not belong to this class, and therefore have no bearing.

In *Hinde's Lessee* v. *Longworth*, 11 Wheat. 199, 211 records of judgments were offered to show indebtedness by the grantor at the date of conveyances made *before the judgments*. They were admitted, though the judgments were *res inter alios*, to show indebtedness (p. 210). *The accounts on which the judgments were founded* being set out in the records, it was held that "*They may be looked to for the purpose of showing that Doyle, the elder* (the grantor), *was in debt at the date of the deed*" (p. 211).

It was held that if these accounts were not properly part of the record there should have been specific objection to them. The act of the petitioners here in putting this

record in evidence generally, is *a fortiori*, a waiver of all objections to a like use of every part of it; and the petition being sworn to has naturally greater probative force than the accounts in the case just cited, quite aside from its effect in connection with the decree, of which it is in fact a part.

The decree is meaningless and of no effect, except as it finds and enforces the agreement in the father's lifetime, set up in the petition, upon which it was granted.

The testimony of Whitaker and Williams shows that this agreement was made in February 1890. It is not disputed and is not to be brushed aside by adjectives. It should be stated, however, that the record shows counsel below relied on the decree and the deed. What testimony there was showing the agreement came out either on cross-examination or in elucidating other matters.

Mr. Whitaker's testimony covers both the making of the agreement and notice of it. He went to Ashland late in February, 1890, to effect the carrying out of this agreement by securing the co-operation of John, the father then being imbecile and his death expected at any time. Not being able to see John he saw his son, E. C. Means, one of the petitioners. He testifies that this agreement was made in his presence ten or fifteen days before at the office of Hon. John Little, in Xenia, Ohio (Rec., 598), and that he so informed E. C. Means (Rec., 595–6–7).

Counsel put a strained construction on this testimony when they say (Brief, 61) that it shows "that he went to Ashland not to give notice of a contract already made but to get John Means' assistance to bring about an arrangement." It was naturally supposed that the assent and co-operation of John Means, who controlled the father's affairs and would control his estate, would greatly facilitate the

carrying out of the arrangement already agreed on. This manifest purpose of Mr. Whitaker is entirely consistent with his direct testimony that the agreement had been made in his presence and explains his expressions on which counsel found their assertion, such as that he went to Ashland "to, if possible, effect the execution of this trust" &c.

As the result showed, it was one thing to have William *agree* to put the share in trust, but quite another to *secure* it. Suit against William was finally required to accomplish what it was thought John's influence and his own agreement would bring about.

Mr. Williams testified: (Rec. 293.)

"A long time before the death of Thomas W. Means, we had a meeting at Xenia, O. John Little, Mr. Glidden. Mr. Whitaker, Mr. Means and myself were present to adjust the family claims. We there and then agreed that the expectancy in the estate of Thomas W. Means of William Means should be turned over to these children. That was the main conference we had about the matter up in Xenia, and William Means agreed to settle upon his children his expectancy in that estate. That contract was made in the presence of all us lawyers—and agreement and adjustment."

The quotations counsel make from his testimony do not overthrow this direct and positive statement. They are fully explained by the evident fact that, the agreement being verbal only, attempts were made to reduce it to writing, which attempts had no result. The quotations made (Brief, 58) refer to a deed made years before and are therefore wholly irrelevant save as showing that the subject was not a new one in the family. It is hardly fair to say the witness evades an answer (Brief 58) to one of the questions on this irrelevant subject.

The letter of this witness of October 18, 1890, does not contradict his testimony. His reference to the threatened suit by William's wife for alimony is entirely consistent with the fact that William had made the agreement but was trying to repudiate it. So of his statement that "Madam and the children were after us pretty hot" (Brief, 59). Mrs. Means would naturally threaten all sorts of suits when her husband refused to keep his agreement.

This witness' letter to Dakin (Rec., 568) shows that his claim and advice to William were that this agreement "was only an unexecuted gift which can not be enforced in law." This accounts for William's conduct in mortgaging part of his interest and in seeking to get something for himself by giving the receipt to estate for the amount of the notes.

The finding of the Circuit Court against the existence of this agreement was founded on William Means' conduct and his letter to his sister which refers only to a trust deed and does not mention an agreement to assign (Rec., 460). Neither was competent (*Clements* v. *Moore*, 6 Wall, 299-313) except possibly in so far as his own interest as a beneficiary is concerned, but its effect was not so limited. Objection was duly made (Rec., 454). That court also overlooked entirely the effect of the record offered by the petitioners which alone is sufficient in the absence of opposing evidence.

William persisting in his refusal to carry out his verbal agreement, suit was brought May, 1891, to enforce it. After full hearing the court granted a decree, and William, after several months' delay, finally complied with it by executing a deed in which he recited that it was to carry out the verbal agreement of February, 1890. There was no objection to either deed or recital (Rec., 346). This evidence also the Circuit Court overlooked.

If petitioners had made payments to William on account of his share, the question of notice would become important. As they do not claim to have done so that question does not arise. If it did Mr. Whitaker's evidence shows notice (*supra*).

What they rely on is a receipt by William October 16, 1890, dated back to October 6th, for $136,911.74 on account of his share. It is admitted that they in fact paid him nothing whatever, the amount receipted for being merely the sum of the amounts remaining unpaid of the notes given as above stated, with interest to the date of the receipt.

We take it to be elementary that even a release under seal by one who had theretofore transferred his claim, if given without any real consideration or any change of position to his detriment by the releasee, would not affect the rights of the assignee even though no notice had been given. And in equity it would make no difference whether the transfer was of a legal or an equitable character.

The petitioners have not in any wise changed their position to their detriment by reason of this receipt, nor are there any grounds whatever for estoppel. They rely on the receipt as payment on two grounds only:

1st. That the advances represented by the notes were not covered by Item 5 of the will and were therefore chargeable against the share.

2d. That even if this were not so, there was a *bona fide* dispute between them and William which the receipt was given to compromise.

The first ground depends on the main question already discussed. If it be found valid, the case ends; for the trustees claim no greater rights than William had when he made the agreement in February, ~~1850~~ 1890.

The second ground, which is reached only in case the first be overthrown, depends on the success of counsel's attempt to make a compromise out of an absolute surrender by a beneficiary to his trustees of large and valuable rights for which he received nothing at all.

The real nature of the alleged compromise, which it is solemnly said the court should refuse to disturb, will appear by a

STATEMENT OF FACTS AFTER THE TESTATOR'S DEATH.

Nothing of consequence occurred after February, 1890, until after the father died, June 8th, 1890. The petitioners were not appointed until July 28th, but on June 16th they obtained an order from William dated on that day at Ashland, Ky., directing that the representatives of his father thereafter to be appointed should charge the notes he had theretofore given against his share (Rec., 433). They had this drawn and gave it to Mrs. Adams to ~~let~~ get William to sign it. (Rec., 475–6.)

The next day, June 17th, they got from William a second paper explaining that his object in signing the paper of June 16th was "to insure the estate against loss through the purchase of such obligations no matter how obtained, and for no other purpose whatsoever." (Rec., 434.)

On July 28th, before the petitioners qualified, William delivered to them a revocation of the paper of June 16th, giving his reasons at large, one of which was, "That said paper was not to be delivered without my consent," and another that "Said paper was not intended to be used in any manner against my interest or desire."

The mental, moral, and physical condition of William at this time plainly appears from the fact that, although his

revocation was made after advice as to his legal rights, the nature of which advice nowhere appears in the record, he nevertheless on October 4th *revoked the revocation by endorsement thereon.* (Rec., 436.)

No meeting nor anything whatever had occurred in consequence of the suggestion in the letter of his counsel of July 28th, which accompanied his revocation. What occurred on October 4th and afterward had, as the record shows, no relation of any sort with that letter.

This extraordinary conduct is accounted for partly by his condition and partly by the fact that the design of getting William's share under cover until the storm should blow over was again taken up. His family, as well as his creditors, were threatening. (Rec., 344–5.)

The "independent advice" which counsel say William Means got from Mr. Baker, at the time the receipt was given, October 16th, was "that it is a well settled rule of law that a man who gave an administrator a receipt for more money than he got, did not estop himself from afterward claiming the balance that was due him." (Rec., 346.) Mr. Baker at the time was not advised as to the provisions of the will, which cut no figure in the transaction (Rec., 346).

It is simply begging the question to say that the petitioners occupied no trust relation to William in the matter because their dealing was "*in respect of a debt asserted against a legatee*" (Brief, 75), for we do not reach this part of the case at all unless and until it has been determined that Item 5 *had forgiven these very debts.* Then they have themselves become part of his legacy, and asserting them in any way was depriving him of his legacy.

Advice of their counsel may avail petitioners as an excuse, but it can not justify or give legal effect to their

conduct. It may shield them from a charge of actual bad faith, but can not relieve them in any degree from the high obligation of trust which imputes to them the real wrong they did to the beneficiary of their trust.

Counsel have invented a new use for advice of counsel, which, if sanctioned by this great court, will soon reduce the law of trusts to the level of the law of malicious prosecution.

We understand that the wholesome rules relating to trusts so override the ordinary rules governing transactions between strangers, such as that relating to voluntary payment, that if William had, even under the erroneous advice of his counsel, *paid* these notes to petitioners, the continuing obligation of their trust would still attach to the money and they would hold it for him, at least until, they acting in good faith, something should call the law of estoppel into play.

We have stated the exact facts about the alleged "compromise" which, it is said, resulted in the receipt for virtually William's entire share of his father's estate (E. C. Means, Q. 343, Rec., 533). We are convinced that no reasoning of ours can add anything in this court to the argument that statement itself carries.

It disposes of the cases cited on the subject of the compromise of disputed claims, not one of which, nor any other of which we are aware, was between trustee and beneficiary or involved an entire surrender on one side and no consideration whatever on the other.

The practice of more than a century has substitued application to a proper court for construction of wills and other trusts, and its decision of the rights of beneficiaries, for the ordinary methods of adjusting rights between stran-

gers. If trustees can ever by compromise or settlement with their beneficiaries deprive them of any part of their actual rights, it could only be, as in case of other parties, by mutual concessions. If, there being a real dispute (which appears not to have been the case here), it had been agreed that part of the notes should be taken out of the legacy and the other part surrendered, the transaction might be treated as a compromise. As it was, the essential element of compromise was lacking. It was present in every one of the cases cited by counsel on this subject. This transaction did not even savor of compromise.

THE AVERMENTS OF THE BILL JUSTIFIED THE DECREE OF THE COURT OF APPEALS.

The part of the bill directed against John Means was dismissed and there is no appeal, so it does not figure here.

The bill as against the administrators avers their refusal to recognize the trustees in the distribution of the estate, although they had distributed to each of the four legatees, other than William, more than $44,000; that they had obtained the receipt for $136,035.75 from William by collusion with him to defeat the rights of the trustees, or by fraud upon him, and now set up such receipt as a *pro tanto* distribution to his share; and that even if procured without fraud or collusion such receipt "*would have been invalid and void as to your orators*" (Rec., 13), by reason of the facts averred, viz.: the agreement whereby William's share was no longer under his control and the conversion of the advances made him by his father into gifts by the will. (Rec., 11).

The relief prayed was that the administrators be ordered to pay over to the trustees the full one-fifth interest of William under the will (when it became payable) without reference to said pretended receipt which they prayed to have canceled; that an amount equal to that already distributed to the others be ordered paid the trustees forthwith; and for general relief.

There is not a word in the bill about any compromise or settlement with William, either in the averments or in the prayer. *Nor is there in the answer* which, like the bill, treats the receipt, according to its own terms, as evidence of *payment* to William of his share in his own notes given for advances *without a word importing compromise or other agreement.* The "settlement" of October 6th, mentioned at the end of the receipt, as the undisputed evidence of petitioners themselves shows, was not a compromise or agreement at all, but merely the computation of balances and interest on the notes by the petitioners themselves *when William was not present in person or otherwise* (E. C. Means, Rec., 488, Q., 30 and 31; T. M. Adams id., 439, 444, 474–5, Q., 67, 109, 312).

Omitting every averment about collusion with William or fraud upon him, the bill states a complete case for the relief adjudged.

The fraud, though alleged as one of the grounds of suit, was no more essential to the relief given than it was in *Smith* v. *Kay*, 7, H. L. Cas., 751, where relief was given although the fraud set up was not made out.

THE BILL NOT PREMATURE.

The statements just made show that the bill was not pre-

mature. The trustees' right to sue for their share on the partial distribution already made was undoubted, as well as their right to compel the recognition of their title to the share, notwithstanding the pretended receipt, in advance of the time fixed in the will for full distribution. And the court, once acquiring jurisdiction, had the right to retain it for complete relief, the period named in the will having expired long before the trial.

SUMMARY.

I.

The testator's plan was that his children should have equal portions at his death, whether his advances to them during his life should have been equal or unequal. Living he had always judged their needs and interests and dealt with them accordingly. This he would continue to do. When he must leave them to themselves and divide the large estate he had, until then, held as a reserve behind the line of his children in their struggle with fortune, he would then start them afresh, on an equal footing, and let the past be buried with him.

This is shown:

1. By the explicit terms he used.

2. By the fact that from the beginning—a period of over twenty-five years—his advances had always been greatly unequal and were so then.

3. By his unvarying habit of using his large means to aid or relieve his children, without regard to equality, which course the will shows he expected to follow to the end.

II.

That by "advances" he meant to cover all benefits conferred, although they created indebtedness to him, appears:

1. From the meaning of the term itself.

2. From the fact that all money and property theretofore received from him by his children, or expended for them, had been charged to them as debtors on his business books, and the charges always treated as existing debts.

3. From his releasing a son-in-law from a large indebtedness a few days before he made the will.

III.

The meaning of the will is not to be affected by anything the testator afterward said or did. As he made no later *testamentary* expression, even a change of intention, no matter how shown or expressed, would have been ineffectual. Well settled and salutary rules would deny it effect. But there is no evidence of any change of intention, or in his habit toward his children, or that he meant to make an exception in Williams' case.

IV.

When he made the will his children had all reached mature age. They were all prosperous and, chiefly by his aid, had become rich. It was quite natural that four years later he should yield to the suggestion of equalizing their accounts. It was an apparent but not a real equalizing of benefits, as John, who suggested it, well knew. It did not even profess to include the grandson, who was left $70,000 behind.

But if the advances had then been all actually made equal and the accounts closed, it would have shown no intention on the testator's part to abandon his lifelong purpose, expressed in his will, of making further advances to his children or to "*some of them*," should occasion arise. It would simply have shown that he thought such occasion unlikely to arise.

But the unlikely happened. For eight years after the will was made the good old man enjoyed the result of his wise and generous treatment of his children. He was almost ready to "wrap the drapery of his couch about him and lie down to pleasant dreams" when trouble, which seemed to have forgotten his family, broke over it again.

It directly affected William only, but really touched the entire family, as every one knew and felt. It struck at good name as well as estate. The name belonged to the family. It came from the father. He did not stop to add or subtract, but his family pride and affection promptly sent his fortune to the rescue.

What he had done before for John, Mrs. Adams and Culbertson he did again for William. He did not *loan* him money. He did not provide him a *portion*. He went to his relief by large advances of money to pay off his debts. He put up $75,000 to buy his freedom from prosecution.

When he made the various advances to pay William's debts he received William's securities which his creditors held. These were sold and credited. The advances extended over a period of nearly a year. Their total was never at any one time greater than the amount of the first advance, and was generally less than one-third of the amount stated by opposing counsel.

V.

The father's uniform practice, so well known and long followed, would have repelled any presumption of an intention to make these advances gifts outright or by way of advancement, if nothing had been said or done.

Nothing was said or done when the first and chief advance was made. It was charged, the next day, on the testator's books as a debt, like all previous advances to every child.

Still later a note was given by William at the suggestion of John, who acted for his father. No matter why or when this was done, it was an after-thought and did not make the payment of the money any the less an advance like those so often made before to the others and to William.

But both the testimony and the letters written at the time show that the sole purpose in taking the note was to protect William's share under his father's will from suits threatened by stockholders of the ruined bank he had managed. This purpose originated with John and not with William.

No note was taken at the time any advance was made, but always afterward—sometimes long. They were always at one day and for the full amount advanced, ignoring credits already received from the sale of securities. But all the advances, except the first, were entered in the books when made.

All these advances created debts. But they were none the less advances, such as the father had already made, declared his purpose to continue making, and turned into executed gifts at his death by the express terms of his will.

The subsequent giving of notes made no difference. Nor did the attempt in three of the last notes, to charge them on William's share, because it is admitted that this was not authorized, approved, or even known by the father.

VI.

After the father died the petitioners were diligent in getting from William papers authorizing them to charge the balances of all these notes, with full interest, against his share. They had one, at least, of these papers drawn by their attorney and given one of the sisters to get William's signature. They did this before their appointment, and though he revoked this authority before they qualified, they endorsed on the paper their acceptance of the authority in spite of the revocation.

Notwithstanding his revocation William, partly to put his share beyond the reach of his family and creditors, partly to obtain some ready money for himself, gave a receipt for $136,035.75 as paid him on his share, that being the full amount of the notes less credits by sales of his securities and including full interest to that date.

Not a dollar was paid him. He received no consideration in any form. One week later he asked and received the few securities remaining unsold (Rec., 199), but they were of little, if any, value. They had not even been mentioned when he gave the receipt. As the will had turned his debts into gifts they were his already.

The receipt was, therefore, a mere form. It was evidence of no payment whatever from his trustees who took it from him. Their belief is immaterial and so are their actual motives. Trustees can not discharge their obliga-

tions by going through forms. They can not pay by making empty motions.

VII.

The claim that there was a compromise is wholly unfounded. The "settlement of October 6th," mentioned in the receipt, refers to a mere computation of the amount by the administrators themselves when William was not present or represented. There was not when the receipt was given, or at any other time, any compromise, nor anything which savored of compromise. There is not a word in the allegations of the bill, nor in those of the answer, about any compromise or settlement of any kind.

If, under the will, William was chargeable with the balances of these advancements which had not been met by sales of his securities, then his receipt evidenced a payment to him. If he was not so chargeable, then his receipt evidenced no payment whatever. It must, even as against William himself, stand or fall by the decision of that question. Nothing was done or agreed in connection with the receipt, which could, or did give it any independent force or effect.

VIII.

But even if the receipt could be upheld, as against William, on some theory of surrender or abandonment of his rights, it is of no avail here, because he had long before transferred them. Nothing could have defeated the perfect equity of his wife and daughters, but a purchase for value and without notice. It is not pretended that the transaction with William was of that nature.

Even an actual compromise with William would not have prevailed against that equity unless it amounted to

such purchase. Mere partial satisfaction of the claim he had assigned would give only a right to a credit or the return of whatever he had received.

If William's transfer of his share to his family had been a pure gift, the result would have been the same; but it was for value.

As nothing was paid William, lack of notice matters not. But there was notice.

IX.

The averments and prayer of the bill justified the relief granted, and the suit was not premature.

CONCLUSION.

If this court approve the present decree, every one of the descendants of Thomas W. Means will receive under his will not only a competence, but a fortune.

If that decree be reversed, not only one of his sons, but three of his granddaughters, will be cut off from the bounty provided in his will and left in penury, while a sum relatively small—about $27,000—will be added to the shares of the others, who already "have so much more than we need" (John to Mrs. William Means, August 16, 1888, Rec., 130).

Looking at the character and lifelong conduct of the testator, can there be any just doubt which of these two results he meant to bring about? Was it not to prevent exactly what our opponents seek to accomplish that he wrote Item 5? Did he not deliberately determine and declare that the equal shares provided by his will should not be affected by what he might do while he lived? When

during William's troubles and after them, he made no change in his will, nor ever by word or act expressed a purpose to alter its effect, was it not because he did not mean, for the first time in his life, to leave one of his children to bear alone a burden he was better able to bear himself, which would crush the child and his family, but could be lightly borne by his large estate?

Respectfully submitted,

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For Respondents.

JOHN LOWRIE,
Of Counsel.

CINCINNATI, December 5, 1898.

NOTE.

The regular reports of the opinion of the Circuit Court of Appeals are 24 C. C. A. 198, and 78 Fed. 536.

Syllabus.

ADAMS *v.* COWEN.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

No. 113 of October Term, 1898. Argued January 10, 11, 1900.—Decided April 16, 1900.

Thomas W. Means died in 1890, leaving a large estate, and a will made some ten years before his death, containing, among other provisions, the following: "Item 4. I give, devise and bequeath all the residue and remainder of my estate, personal, real and mixed, wherever situated or located, of which I shall die possessed, to be equally divided among my four children, John Means, William Means, Mary A. Adams, and Margaret A. Means, and my grandson, Thomas M. Culbertson (son and sole heir of my deceased daughter Sarah Jane Culbertson) who shall be living at the time of my decease, and the issue of any child now living, and of said grandson, who may then have deceased, such issue taking the share to which such child or grandson would be entitled if living. But said share given, devised and bequeathed to said grandson or his issue is to be held in trust as hereinafter provided, and to be subject to the provisions hereinafter contained as to said grandson's share. "Item 5. I have made advances to my said children which are charged to them respectively on my books, and I may make further advances to them respectively, or to some of them, and to my said grandson, which may be charged on my books to their respective accounts. I desire the equal provision, herein made for said children, and the provision for said grandson, to be a provision for them respectively, in addition to said advances made and that may hereafter be made, and that in the division, distribution and settlement of my said estate, said advances made and that may hereafter be made, be treated not as advances, but as gifts not in any manner to be accounted for by my said children and grandson, or any of them or the issue of any of them." He was in the habit of advancing money to his children, the amounts advanced to each individually being entered against him in the father's books. At the date of the will the several amounts so advanced were as follows: John, $79,214.36; William, $58,409.54; Mrs. Adams, $51,207.48; Margaret, $39,120.78; Mrs. Culbertson, $29,609.82. Subsequently, in 1898, William becoming involved, the amount advanced to him was largely increased in manner as set forth in the statement of the case and opinion of the court. After the death of the father a claim was made that the money thus paid out for William was to be held to be a part of his share of his father's estate. *Held*:

(1) That in the absence of some absolute and controlling rule to the contrary, the intentions of a testator, as deduced from the language of the will, construed in the light of the circumstances surrounding

Statement of the Case.

him at the date of its execution, always control as to the disposition of the estate;

(2) That the testator believed that after he had done in his lifetime what, in his judgment, his children severally required, there would be an abundance of his estate left for distribution, and intended that all dealings between himself and each of his children should be wiped out, and that what was left after having discharged to each his paternal obligation should be distributed equally.

After the probate of his father's will, William gave to the administrators of the estate with the will annexed, an acknowledgment of the receipt from them of $136,035.75 in his own notes to his father as part of his distributive share of his father's estate. At the time when this was done he was in straitened circumstances, was broken in spirit and was wavering in his purposes. *Held*, that while a man in the full possession of his faculties and under no duress may give away his property, and equity will not recall the gift, yet it looks with careful scrutiny upon all transactions between trustee and beneficiary, and if it appears that the trustee has taken any advantage of the situation of the beneficiary, and has obtained from him, even for only the benefit of other beneficiaries, large property without consideration, it will refuse to uphold the transaction thus accomplished; and that the conclusions of the Circuit Court of Appeals in this case must be sustained, and its decree affirmed.

On November 16, 1891, the respondents, trustees for the wife and children of William Means, filed their bill in the Circuit Court of the United States for the District of Kentucky against the petitioners as administrators (with the will annexed) of Thomas W. Means, deceased, and John Means, a son of said Thomas W. Means. The case passed to hearing in that court upon pleadings and proofs, and resulted in a decree, on July 31, 1895, in favor of the defendants, dismissing the bill. From such dismissal the plaintiffs appealed to the Circuit Court of Appeals for the Sixth Circuit, which court, on February 8, 1897, reversed the decree of dismissal, and entered a decree in favor of the plaintiffs. 47 U. S. App. 439–676. On May 24, 1897, a petition was filed in this court for a certiorari, which was allowed, and on December 6, 1897, the certiorari and return were duly filed. At the October term, 1898, of this court, after argument and on May 22, 1899, the decree of the Circuit Court of Appeals was affirmed by a divided court. Thereafter upon petition a rehearing was ordered, and the case was argued at the present term before a full bench.

Statement of the Case.

The facts are these: Thomas W. Means, a resident of Ashland, Kentucky, died there on June 8, 1890, leaving an estate consisting chiefly of personal property, which was appraised (including the notes of his son, William Means, for $136,035.75) at $752,302.44. He left four children, John Means, William Means, Margaret A. Means and Mary A. Adams, and one grandson, Thomas M. Culbertson, the only child of a deceased daughter. Some ten years prior to his death, and on July 20, 1880, he made a will, in which, after provisions for the payment of his debts, funeral expenses and expenses of administration, were these two items:

"Item 4. I give, devise and bequeath all the residue and remainder of my estate, personal, real and mixed, wherever situated or located, of which I shall die possessed, to be equally divided among my four children, John Means, William Means, Mary A. Adams, and Margaret A. Means, and my grandson, Thomas M. Culbertson (son and sole heir of my deceased daughter Sarah Jane Culbertson) who shall be living at the time of my decease, and the issue of any child now living, and of said grandson, who may then have deceased, such issue taking the share to which such child or grandson would be entitled if living. But said share given, devised and bequeathed to said grandson or his issue is to be held in trust as hereinafter provided, and to be subject to the provisions hereinafter contained as to said grandson's share.

"Item 5. I have made advances to my said children which are charged to them respectively on my books, and I may make further advances to them respectively, or to some of them, and to my said grandson, which may be charged on my books to their respective accounts. I desire the equal provision, herein made for said children, and the provision for said grandson, to be a provision for them respectively, in addition to said advances made and that may hereafter be made, and that in the division, distribution and settlement of my said estate, said advances made and that may hereafter be made, be treated not as advances, but as gifts not in any manner to be accounted for by my said children and grandson, or any of them or the issue of any of them."

Statement of the Case.

Thomas W. Means was a prosperous iron manufacturer, who had, as stated, accumulated in his lifetime a large estate. For many years he had been in the habit of letting his children have money. This he had been doing for at least twenty-five years before the making of the will. This money was not given to them in equal sums at regular or irregular intervals. In other words, he was not making a partial, and equal distribution of his estate in advance of his death, but the money was paid to or for one or another of his children as occasion seemed to call for it. Accounts were entered with each of these children in his books, and the money thus paid to or for them was charged against them in these accounts, so that upon the face of the books they stood as debtors to him for the amounts so charged. The amounts thus charged were sometimes large. The accounts were often reduced by money or property returned to the father. So the father dealt separately with each child, letting him or her have money whenever in his judgment the interest of the child called for it. He was helping them in their business, paying their debts and otherwise using his large properties for their benefit. At the same time the accounts were kept in his books in such a way as to indicate that he retained a claim against each child for the balance shown on such account. He made memoranda on his books, such as this at the head of John's account: "This account and the accounts of William Means and Mary A. Adams are not to be charged with interest when final settlement is made, or at any time. Thomas W. Means." With that as the relation between himself and children, Thomas W. Means made the will containing the two items above quoted. He was then seventy-seven years old. At the date of the will the accounts showed the following debtor balances:

John	$79,214 36
William	58,409 54
Mrs. Adams	51,207 48
Margaret	39,120 78
Mrs. Culbertson	29,609 82

In 1888 a bank in Cincinnati, of which William was president, failed, a failure which brought financial ruin to William. To

relieve him from the embarrassment and dangers which threatened by reason of such failure, a large sum of money was paid out by Thomas W. Means for William's benefit. The question presented in this case is whether the money thus paid out is to be held a part of William's share of his father's estate, or whether it is to be deducted from the estate and the division made of the balance between the five legatees.

Mr. Lawrence Maxwell, Jr., for petitioners. *Mr. Julius L. Anderson* and *Mr. John F. Hager* were on his brief.

Mr. John J. Glidden and *Mr. Judson Harmon* for Cowen. *Mr. H. P. Whitaker* and *Mr. John Little* were on their brief.

Mr. Justice Brewer, after stating the case, delivered the opinion of the court.

The primary question is upon the construction of the fifth item of the will of Thomas W. Means. If there had been no such item of course all sums due from the children and grandchild to the father and grandfather would be part of the property of his estate and to be counted in determining the sum to be divided among the five in accordance with item four. But item five evidently contemplated that some amounts were to be deducted from the gross sum of the decedent's property before a division was to be made. What were those deductions? What did the testator intend should be deducted? For, in the absence of some absolute and controlling rule of law to the contrary, the intentions of a testator, as deduced from the language of the will, construed in the light of the circumstances surrounding him at the date of its execution, always control as to the disposition of the estate. Without entering into any discussion we make these quotations from prior decisions of this court. In *Smith* v. *Bell*, 6 Pet. 68, it was said by Chief Justice Marshall:

"The first and great rule in the exposition of wills, to which all other rules must bend, is that the intention of the testator expressed in his will shall prevail, provided it be consistent with the rules of law. 1 Doug. 322; 1 W. Bl. 672. This principle

is generally asserted in the construction of every testamentary disposition. It is emphatically the will of the person who makes it, and is defined to be 'the legal declaration of a man's intentions which he wills to be performed after his death.' 2 Bl. Com. 499. These intentions are to be collected from his words and ought to be carried into effect if they be consistent with law. In the construction of ambiguous expressions, the situation of the parties may very properly be taken into view. The ties which connect the testator with his legatees, the affection subsisting between them, the motives which may reasonably be supposed to operate with him, and to influence him in the disposition of his property, are all entitled to consideration in expounding doubtful words and ascertaining the meaning in which the testator used them. . . . No rule is better settled than that the whole will is to be taken together, and is to be so construed as to give effect, if it be possible, to the whole. . . . Notwithstanding the reasonableness and good sense of this general rule, that the intention shall prevail, it has been sometimes disregarded. If the testator attempts to effect that which the law forbids, his will must yield to the rules of law. But courts have sometimes gone farther. The construction put upon the words in one will has been supposed to furnish a rule for construing the same words in other wills; and thereby to furnish some settled and fixed rules of construction which ought to be respected. We cannot say that this principle ought to be totally disregarded; it should never be carried so far as to defeat the plain intent; if that intent may be carried into execution without violating the rules of law. It has been said truly, (3 Wils. 141,) 'that cases on wills may guide us to general rules of construction; but unless a case cited be in every respect directly in point, and agree in every circumstance, it will have little or no weight with the court, who always look upon the intention of the testator as the polar star to direct them in the construction of wills.'"

And in *Blake* v. *Hawkins*, 98 U. S. 315, 324, Mr. Justice Strong used these words:

"It is a common remark, that, when interpreting a will, the attending circumstances of the testator, such as the condition

of his family, and the amount and character of his property, may and ought to be taken into consideration. The interpreter may place himself in the position occupied by the testator when he made the will, and from that standpoint discover what was intended."

See also *Clark* v. *Boorman's Executors*, 18 Wall. 493; *Colton* v. *Colton*, 127 U. S. 300; *Lee* v. *Simpson*, 134 U. S. 572.

In the light of these decisions we turn to inquire what was the intention of the testator? Suppose that on the next day after making this will he had died, upon what basis would the distribution of his estate have been made? Obviously by first cancelling all the gifts and advances made to his children, and then distributing the balance equally between the five. For he declares that the equal provision made by item four shall be in addition to his advances, "and that in the division, distribution and settlement of my said estate said advances . . . be treated not as advances, but as gifts not in any manner to be accounted for by my said children and grandson, or any of them, or the issue of any of them." Language could not be more clear. Nothing could express the intent of the testator more forcibly than these words. Whatever he had done in the way of letting his children and grandson have money was to be taken as a matter of gift, for which none of the recipients was to account, and only his estate, less such gifts and advances, was to be equally distributed between the legatees named. And this intent, which is so clearly disclosed, in respect to what he had already done, is equally clear in respect to what he might do thereafter. He says that he "may make further advances to them respectively, or to some of them," and declares that in the division, distribution and settlement of his estate "said advances . . . that may hereafter be made, be treated, not as advances, but as gifts." In other words, as he had used some of his property in the past again and again to help his children, he saw that it was likely in the future he might do the same thing, and declared not only that every dollar he had let them have in the past, but also every dollar that he might let them have in the future should be taken, "not as advances, but as gifts." Not only that, but that such gifts should not be accounted for in any manner

by any of the recipients, and that only the balance of his estate, after all these personal gifts were cancelled, should be distributed equally among the legatees. As in the past he had freely used his estate for the benefit of his children, so he announced his intention to deal as freely with it in the future, and to use any part of it in any way that he might deem best for the interests of any one of his children, and declared that such help given, or that might be given in the future, should not be made the basis of any accounting between his legatees. He knew he had a large estate, and that, whatever he might do with a fraction of it, there would be an abundance left for each of them — enough to place them beyond the reach of want. He had the large and generous paternal feeling; that feeling which prompts the parent to care as best he can during his lifetime for each of his children according to their respective wants, and he did not mean that anything he did for one child should be challenged by another. He doubtless recalled, as every parent does, that during infancy and childhood one child had called for more attention and care, more hours of toil and watch, than another. He realized that as they had grown to manhood and womanhood, and entered into their various places in life, there had been different calls for pecuniary assistance, and that doubtless there would be differences in the future. He knew that he had responded to every need of each child in its early days, was trying in the later days of manhood and womanhood to make like responses, and felt that while life should be prolonged to him he would be under the same pressure of affection to each. He believed that after he had done in his lifetime what in his judgment they severally required there would be an abundance of his estate left for distribution, and intended that all dealings between himself and each of his children should be wiped out — there should be a *tabula rasa* — and that what was left (and it would be a large estate) after having discharged to each one his paternal obligation, the untouched estate should be distributed equally. We do not see how that purpose and thought of his could be expressed more clearly and forcibly than it was done in the fifth item of the will, and it would be a sad commentary on the wisdom of the law if that purpose was not recognized and enforced.

It is said that there is an expressed limitation on this generous purpose in that he describes the advances already made as "charged to them respectively on my books," and that as to further advances they "may be charged on my books to their respective accounts," and that in order that any subsequent advances should come within the scope of this provision they should be formally charged on his books "to their respective accounts." We cannot believe that the generous purposes of the father were intended to be limited by the action of a bookkeeper. In the full possession of his faculties and watchful over his books he knew what entries had been made, and that they told the full story of his advances to his children, and so, not unnaturally, he referred to those books as evidence of those advances, but as to future advances he says only that they "may be charged on my books," and surely he did not make the possibilities of such entries the measure of his generosity. He was 77 years of age when this will was made. He could not foresee the length of days which might be allotted to him nor the possible failure of any of his faculties—and indeed before his death there was a failure of eyesight, and possibly, towards the last, of his mental powers. Of course, when he made this will he knew the possibility of these things, and it is inconsistent with the whole spirit of the will to suppose that he meant that his generosity should be determined and measured by the fidelity or forgetfulness of a mere clerk. No man acting in a spirit of generous affection ever contemplates that a stranger shall measure the scope and reach of such affection. It is a matter personal to himself, the beginning and ending of which, the scope and limits of which, he and he only is to determine.

With this understanding of the scope and purpose of this clause in the will, we pass to a consideration of what took place in respect to the advances for the benefit of his son William. At that time the father was feeling the weaknesses of old age, his eyesight was failing, and he had called his son John to act as his agent in the care of his estate.. News of the disaster to the bank and the effect of its failure on the welfare of his son William came to the father, and John went to Cincinnati to investigate, came back and reported the situation as he had

found it; told his father of the personal loans made to William by the bank, and that they were secured by collateral. We quote his testimony as to the conversation with his father:

"Q. 832. What communication did you have with your father upon your return to Ashland?

"A. I told him of William's debt to the bank—individual debt—and what it would probably amount to, and that friends here advised it was for William's interest that that debt, individual debt, should be paid. I told him that the securities which William had turned over to the bank as security on the debt would some of them probably be sacrificed at a sale here—that I thought we had better pay the debt.

"Q. 833. What did he say?

"A. He said that he was satisfied to do whatever I thought was best.

"Q. 834. What else did he say about the matter other than to say to you that he was satisfied to do whatever you thought was best?

"A. Well, I think I have answered it. I cannot repeat the conversation between us any more than give the general result of it."

On the faith of this conversation John returned to Cincinnati, and having raised the needed money, paid off William's obligations to the bank and took up the collateral, whose face value was largely in excess of the indebtedness. That the collateral when properly utilized, as it apparently was, did not pay the amount of William's indebtedness to the bank, is immaterial, nor is it material that William gave a note for the amount of this advance, as well as other notes afterwards for like advances, and that such notes were entered on the books of the father in the account of "bills receivable." It appears that this payment was not made at the request of William, but made upon consultation between the father and his son and agent, John, and made probably with the expectation that the collateral, if properly used, would pay the amount of the indebtedness.

And here it becomes important to consider the relations of John Means to his father. As the father grew old and his faculties began to fail he naturally called his oldest son John into his service, and John acted during the last years of his father's life as his agent, and it was really at John's suggestion

that the money was advanced for the benefit of William. But in calling John to his service as agent and caretaker of his property there is nothing to indicate that the father meant that the son should do anything to prevent the full carrying out of the purpose expressed in his will. He had no express authority, and indeed no implied authority to alter that instrument in which had long been recorded the settled determination of the father. So that whatever he may have done in caring for the property as the agent of his father during his lifetime is not to be taken, unless there are other circumstances to indicate the fact, as showing an intent on the part of the father to change in any way the scope and effect of the will.

And indeed it is but simple justice to John Means to say that from the evidence we are satisfied that there was no thought or intent on his part to change or limit his father's will. He did not intend by any strategy or device to thwart his father's purpose of kindness to any of his children, nor did he pursue the course he did in respect to this advance with the idea that he could satisfy his father's desire to help William and at the same time place the act of help outside the reach of item five of the will, and thus advance the pecuniary interest of himself and the other legatees not thus helped by his father. Very likely he was uncertain as to the construction which would be placed upon item five; possibly thought that even if it meant exactly that which we are clear it does mean, there might be an impropriety at his father's age and feebleness in his advancing so much money for the benefit of a single child, and in order that the transaction, in case of his death before that of his father, might be clearly disclosed, took notes from William and entered them on his father's books under the head of "bills receivable." It appears from some of the testimony that there was also a thought of protecting William's share in the estate which by the death of the father might soon come to him, from attacks of creditors, and it may also be that partly on that account William executed the notes which were received for these moneys. At any rate, the correspondence between the brothers at the time of these transactions indicates that they were friendly, and that John was willingly doing that which he thought the

father desired in using a portion of the father's estate in helping William out of his troubles. But whatever John or William may have purposed or thought, the evidence does not indicate that the father intended that this help extended to William should stand in any different attitude to that which he had theretofore extended to others of his children, or meant that this advance should not come within the scope of the provisions in item five; and that is the fundamental question in the case. It is the father's estate which is being distributed, and it is the duty of the courts to see that it is distributed according to his expressed intention.

The testimony in this case is voluminous, and there are many facts and circumstances disclosed in it throwing light on the questions which we have considered. We have deemed it unnecessary to refer to them in view of the very full and satisfactory opinion filed by the Circuit Court of Appeals, in which these facts and circumstances are recited and considered at length, and which in the main meets our approval.

One further question remains for consideration: The father died June 8, 1890. The will was duly probated, and administrators with the will annexed were appointed and qualified. On October 16, 1890, William Means executed and delivered to these administrators the following receipt:

"ASHLAND, KY., *October* 16, 1890.

"Received of Thomas M. Adams and E. C. Means, administrators with the will annexed of the estate of Thomas W. Means, deceased, the sum of one hundred and thirty-six thousand and thirty-five and 75-100 dollars, being a part of my distributable share as legatee under said will applied by them as ordered by me upon the following notes and claims owed by me to the estate of said decedent, and payable to his order, viz:"

[Here follows description of ten notes, with balance due on each, aggregating $136,035.75.]

"This receipt is given in pursuance of settlement made October 6, 1890.

"WILLIAM MEANS.

"Attest: JOHN F. HAGER.
"A. E. LAMPTON."

The validity of this receipt or release was challenged by the respondents, (plaintiffs in the Circuit Court,) who claimed title to that portion of the estate of Thomas W. Means passing under the will to William Means by virtue of the following proceedings: At the May term, 1891, of the Common Pleas Court of the county of Greene, State of Ohio, a decree was entered in a cause then pending in said court between William Means on the one side and on the other Martha E. C. Means, his wife, and their children, Gertrude E. Means and Pearl E. Means and Patti Means, a minor, by her next friend, her mother, which, after finding that in the lifetime of Thomas W. Means, for a good and valuable consideration, William Means made an agreement with his wife and children whereby he settled upon them, through trustees, for their maintenance and support, his interest in expectancy in the estate of his father, Thomas W. Means, transferred all such interest to the plaintiffs as trustees. This decree having been entered after personal service upon William Means, of course binds him both by its findings and order. How far the findings in such decree as to the agreement and the time at which it was made may affect the action of the administrators is a matter discussed in the briefs, but which we deem it unnecessary to consider.

Neither do we stop to consider the charge of fraudulent conduct on the part of the administrators, for independently of those considerations we are of opinion that equity will not enforce this receipt or release. It was a surrender by William Means, without any consideration, of practically his whole interest in his father's estate, amounting to between $100,000 and $200,000. The administrators were acting in a fiduciary capacity. Their obligations to each of the beneficiaries were equal. Their duty was to dispose of the property placed in their hands according to the expressed will of the testator, and they were not at liberty to act in the interests of one legatee as against those of another. If they were doubtful as to the meaning of any clause in the will they should have applied to the court for its construction and direction. If they chose to act upon their own interpretation of its meaning they should have so acted, and not sought to conclude any of the legatees by a contract

binding him to accept their interpretation. As shown by papers introduced in evidence, signed by William Means, they proceeded with more than promptness and with great activity and energy to secure this and other releases. Obviously William Means was in such a condition as to require that they who were in fact trustees of his interests should seek to protect instead of destroying them. We think the evidence justifies that which was said by the Court of Appeals in its opinion:

"William had lost all his property, and was in very straitened circumstances. Since his downfall he has been broken in spirit and wavering in his purposes. He seems at times to have been impressed that the administrators had a moral, if not a legal, claim upon him, that he should yield up his legacy to the estate, and this claim was pressed and insisted upon by the administrators. That they had no such legal claim upon him, we have already determined. His brother and sisters all being in affluent circumstances, and his own family in needy circumstances, that he should have voluntarily given up the whole of this large sum, with no mistake in regard to what his legal rights were, it is difficult to believe. It amounted simply to a gift to the administrators for the benefit of the other legatees, whose only claim rested on the bounty of the testator. Courts of equity view such transactions with distrust, and if the circumstances indicate that the trustee has dealt with the beneficiary unjustly, will not hesitate to set them aside. The absence of any adequate consideration in itself raises a presumption of unfairness, which the trustee is bound to repel."

While a man in the full possession of his faculties and under no duress may give away his property, and equity will not recall the gift, yet it looks with careful scrutiny upon all transactions between trustee and beneficiary, and if it appears that the trustee has taken any advantage of the situation of the beneficiary, and has obtained from him, even for only the benefit of other beneficiaries, large property without consideration, it will refuse to uphold the transaction thus accomplished. *Taylor* v. *Taylor*, 8 How. 183; *Comstock* v. *Herron*, 6 U. S. App. 626–637, and cases cited; 1 Story's Eq. Jur. secs. 307, 308; 2 Pomeroy's Eq. Jur. secs. 951, 958, 1088. So, without considering

the debatable questions presented in respect to this receipt or release, we are of opinion that the Circuit Court of Appeals was right in refusing to uphold it.

There is nothing else in the case that seems to us to call for consideration. We find no error in the conclusions of the Circuit Court of Appeals, and its decree is

Affirmed.

Dissenting: MR. JUSTICE HARLAN, MR. JUSTICE GRAY, MR. JUSTICE BROWN and MR. JUSTICE WHITE.